

# GOVERNMENT SHUTDOWN I: WHAT'S ESSENTIAL?

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON  
CIVIL SERVICE  
OF THE  
COMMITTEE ON GOVERNMENT  
REFORM AND OVERSIGHT  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS  
FIRST SESSION

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DECEMBER 6, AND 14, 1995

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# CONTENTS

	Page
Hearing held on:	
December 6, 1995 .....	1
December 14, 1995 .....	491
Statement of:	
Bachus, Hon. Spencer, a Representative in Congress from the State of Alabama; Hon. Peter Hoekstra, a Representative in Congress from the State of Michigan; Hon. Ken Calvert, a Representative in Congress from the State of California; and Hon. J.D. Hayworth, a Representative in Congress from the State of Arizona .....	509
Broadnax, Walter, Deputy Secretary, Department of Health and Human Services; Dwight Robinson, acting Deputy Secretary, Department of Housing and Urban Development; Thomas P. Glynn, Deputy Secretary, Department of Labor; George Muñoz, Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury; Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration, Department of Veterans Affairs; and Shirley Chater, Commissioner, Social Security Administration .....	22
Hoyer, Hon. Steny, a Representative in Congress from the State of Maryland; Hon. George Gekas, a Representative in Congress from the State of Pennsylvania; Hon. Glen Browder, a Representative in Congress from the State of Alabama; Hon. Joe Barton, a Representative in Congress from the State of Texas; Hon. Karen McCarthy, a Representative in Congress from the State of Missouri; and Hon. Sonny Bono, a Representative in Congress from the State of California .....	580
Koskinen, John A., Deputy Director for Management, Office of Management and Budget; Christopher H. Schroeder, Deputy Assistant Attorney General, Office of Legal Policy, Department of Justice; and Allan D. Heuerman, Associate Director for Human Resources, Office of Personnel Management .....	219
Letters, statements, etc., submitted for the record by:	
Bass, Hon. Charles F., a Representative in Congress from the State of New Hampshire, prepared statement of .....	15
Bachus, Hon. Spencer, a Representative in Congress from the State of Alabama, prepared statement of .....	512
Barton, Hon. Joe, a Representative in Congress from the State of Texas, prepared statement of .....	596
Boehner, Hon. John A., a Representative in Congress from the State of Ohio, prepared statement of .....	505
Bono, Hon. Sonny, a Representative in Congress from the State of California, prepared statement of .....	605
Brickhouse, Eugene A., Assistant Secretary for Human Resources and Administration, Department of Veterans Affairs:	
Information concerning lawn care workers .....	210
Prepared statement of .....	68
Broadnax, Walter, Deputy Secretary, Department of Health and Human Services, prepared statement of .....	25
Browder, Hon. Glen, a Representative in Congress from the State of Alabama, prepared statement of .....	592
Calvert, Hon. Ken, a Representative in Congress from the State of California, prepared statement of .....	522
Chater, Shirley, Commissioner, Social Security Administration, prepared statement of .....	186

# IV

	Page
Letters, statements, etc., submitted for the record by—Continued	
Clinger, Hon. William F., Jr., a Representative in Congress from the State of Pennsylvania, letter to Mr. Panetta, regarding management functions of OMB, dated June 21, 1994 .....	11
Collins, Hon. Cardiss, a Representative in Congress from the State of Illinois, prepared statement of .....	20
Ensign, Hon. John, a Representative in Congress from the State of Nevada, prepared statement of .....	508
Gekas, Hon. George, a Representative in Congress from the State of Pennsylvania, prepared statement of .....	588
Glynn, Thomas P., Deputy Secretary, Department of Labor, prepared statement of .....	36
Hayworth, Hon. J.D., a Representative in Congress from the State of Arizona, prepared statement of .....	556
Hoekstra, Hon. Peter, a Representative in Congress from the State of Michigan:	
Letters concerning Department of Labor's activities during recent lapse in funding .....	567
Prepared statement of .....	551
Horn, Hon. Stephen, a Representative in Congress from the State of California:	
Information concerning excepted and furloughed employees .....	209
Prepared statement of .....	17
Hoyer, Hon. Steny, a Representative in Congress from the State of Maryland, prepared statement of .....	583
Heuerman, Allan D., Associate Director for Human Resources, Office of Personnel Management .....	244
Koskinen, John A., Deputy Director for Management, Office of Management and Budget, prepared statement of .....	225
Lazio, Hon. Rick A., a Representative in Congress from the State of New York, prepared statement of .....	500
McCarthy, Hon. Karen, a Representative in Congress from the State of Missouri, prepared statement of .....	601
Mica, Hon. John L., a Representative in Congress from the State of Florida:	
Information concerning overtime .....	210
Open letter to Federal employees .....	493
Prepared statement of .....	495
Moran, Hon. James P., a Representative in Congress from the State of Virginia, prepared statement of .....	6
Morella, Hon. Constance A., a Representative in Congress from the State of Maryland, prepared statement of .....	560
Muñoz, George, Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, prepared statement of .....	47
Schroeder, Christopher H., Deputy Assistant Attorney General, Office of Legal Policy, Department of Justice, prepared statement of .....	238
Thompson, Hon. Bennie G., a Representative in Congress from the State of Mississippi, prepared statement of .....	502

# GOVERNMENT SHUTDOWN I: WHAT'S ESSENTIAL?

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WEDNESDAY, DECEMBER 6, 1995

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CIVIL SERVICE,  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Morella, Bass, and Moran.

Ex officio present: Representative Clinger.

Also present: Representative Horn.

Staff present: George Nesterzuk, staff director; Garry Ewing, counsel; Ned Lynch, professional staff member; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Elisabeth Campbell, minority staff.

Mr. MICA. Good morning. I would like to call this meeting of the House Subcommittee on Civil Service to order.

The subject of today's hearing is government shutdown and what is essential? I will begin this hearing by welcoming our witnesses, guests and fellow colleagues. I have an opening statement, then we will hear from some of the other Members.

Today the subcommittee will be reviewing the government shutdown, both as it affected our Federal work force recently and what might happen in the event of a future government lapse in appropriations. Any review of the government shutdown must center on which activities of the Federal Government are essential and which are nonessential.

The Constitution of the United States is clear in Article I, Section 9, that "No money shall be drawn from the treasury but in consequence of an appropriation made by law." Despite this constitutional restriction, we recognize that certain functions of our government are, in fact, essential, and its work force must continue to operate even when appropriations do lapse.

By tradition, it is the President, together with OMB and the individual agencies, that have been allowed to decide which functions in agencies are essential and which, in fact, are to be shut down. Part of the reason that I, and other new Members, sought election to Congress was really to come here with the intention of exploring these issues in a broader context. In our attempt to balance the Federal budget, we deal with this issue directly as we decide what, in fact, are essential national functions and activities. That, of course, is part of a larger question as we consider the proper role

of our Federal Government, including alternatives such as privatizing, downsizing, or shifting responsibilities to State and local authorities.

No one can deny the fact that taxpayers and the average citizen outside the Beltway must ask some very serious questions when large segments of our Federal Government close down and they see no appreciable differences in their lives. Inside the Beltway, many people spoke of assessing blame for the government shutdown of nonessential services.

Outside the Beltway, many citizens and taxpayers applauded closing down nonessential government activities. Others outside the Beltway, who have grown dependent on Federal Government benefits and services, were, in fact, appalled and dismayed, and had their lives severely disrupted by the shutdown.

In this hearing today, I hope we can review, first, what took place in the recent shutdown; and, second, what plans are under consideration for any future government closure. It is important to note that the shutdown itself has not been a new idea to this administration. I believe it was part of a calculated strategy by the administration to close down the government this year.

Planning for this supposedly spontaneous shutdown began as early as July of this year. In September, agencies were required to submit shutdown plans to OMB. This was in marked contrast to the first shutdown, which occurred under President Reagan in 1981, when the first OMB guidance to agencies was issued less than a week before employees were sent home.

In spite of the current administration's advanced planning, it is unfortunate that the execution of the shutdown was, in many instances, disorganized and illogical, at best, and oftentimes chaotic experience. Let me cite a couple of examples here, and we have people that will speak to this as witnesses.

The Department of Housing and Urban Development [HUD], initially released all but 136 of nearly 12,000 employees. As a result, some housing programs were shut down, even though funds were available for many major housing programs. Even with a 90 percent retention rate at the Department of Veterans Affairs, the administration announced that the processing of new applications for some major veterans benefits programs would be suspended. Within a week of the shutdown, the White House announced the recall of more than 1,700 DVA employees.

The Department of Education, as another example, furloughed 86 percent of its work force, while the Bureau of Alcohol, Tobacco, and Firearms found it necessary to retain, so-called "essential," 15 of 23 public affairs officers. The Social Security Administration furloughed 90 percent of its work force. Retirement claims processing ceased. At the same time, retirement claims for civil service retirees, at the Office of Personnel Management, were being processed at 100 percent capacity and activity rate.

Three days into the furlough, the President initiated a recall of more than 50,000 Social Security personnel, raising questions about whether they should have been furloughed in the first place. Furthermore, in the middle of the shutdown, the President declared some activities nonessential on Monday, when on Friday these same functions were suddenly termed "essential."

It's important that we look at the discrepancies and review the agencies, and see what is, in fact, a priority activity. We must also examine what activities are more costly to close down than to continue. Finally, we must consider Federal employees whose lives are severely disrupted by this disorderly process.

This may have been a well-planned shutdown, but I find some of the results very confusing. We heard a lot of rhetoric, and saw a lot of posturing and grandstanding from the administration. As cold reality set in, we saw backpedaling and the recall of employees. And what about the question, what is essential? The administration seems not to have defined this consistently among its various agencies.

Was this poor management or premeditation? Should Congress have established better criteria or better defined guidelines? The priorities seem evident to me. First and foremost, we have a responsibility to ensure national security. We have a duty to provide for the effective enforcement of our laws. We must take adequate measures to guarantee the public safety, health, and welfare. Next, we must ensure that those who cannot sustain themselves are provided for adequately.

Most of these functions were deemed essential last month. Most were carried out with only minor interruptions. But it is important that we look at the discrepancies in the implementation of the administration's first shutdown, if only to make certain that we avoid these problems in the future.

We face the prospect of another shutdown within just a matter of 10 days affecting several of the agencies represented here today. We remain committed to approving legislation that will continue operations, but if another veto does shut down these agencies, we hope this hearing will result in a more consistent criteria for closures and more effective operations of continuing activities.

To explore these issues, we have assembled a panel of senior officials who have responsibility for the management of major agencies that have implemented the shutdown in a variety of ways.

They include Dr. Walter Broadnax, the Deputy Secretary of the Department of Health and Human Services; Mr. Dwight Robinson, Acting Deputy Secretary of the Department of Housing and Urban Development; Mr. Thomas Glynn, Deputy Secretary of the Department of Labor; Mr. George Muñoz, Assistant Secretary for Management and Chief Financial Officer of the Department of the Treasury; Mr. Eugene Brickhouse, Assistant Secretary for Human Resources and Administration of the Department of Veterans Affairs; and Ms. Shirley Chater, Commissioner of the Social Security Administration.

Our second panel includes Mr. John Koskinen, Deputy Director of the Office of Management and Budget; Mr. Christopher Schroeder, Deputy Assistant Attorney General in the Office of Legal Policy at the Department of Justice; and Mr. Allan Heuerman, Associate Director for Human Resource Systems Service in the Office of Personnel Management.

Those are my opening remarks and comments. I will yield now to the ranking member of our panel, the distinguished gentleman from Virginia, Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. I am glad you are having this hearing on the government shutdown that never should have happened. In my view, it was clearly the Congress' fault. We did not get our appropriations bills passed in time. We had a year to do it, and we didn't do it. There was only 1, in my recollection, out of 13 bills that was enacted.

There were a lot of complaints over the fact that the President vetoed the legislative branch appropriations bill, but thank God he did. That would have been the worst thing to have had the Congress paid and none of the rest of the government paid because we took care of our own salaries and operation expenses before the rest of the government. So I'm glad he vetoed that.

But the fact is that we didn't get the appropriations bills passed. That's why we had the government shutdown. And then we deliberately sent a continuing resolution to the President, calculated to draw a veto. Now, I grant you that the Speaker tried to lend some insight into why that happened by going into the fact that he didn't get a window seat on the plane to the Middle East, or he went out the wrong door, or something.

I don't think it was so much the personal snubbing that he perceived occurred as the fact that the legislative branch did not act in an efficient and effective way. The reconciliation bill is far less important than getting these appropriations bills signed, and that, in the future, should be our highest priority.

But 40 percent of the government did not operate, as a result, for 4 days. And I think that's something we should be ashamed of. We also ought to be embarrassed at the fact that we spent \$700 million of taxpayers' money and got no work out of it, no return from the Federal employees who were furloughed, all of whom wanted to be at work performing their jobs; none of them wanted to be getting paid for doing nothing, but 800,000 were sent home.

I think that we need to clarify what is essential and nonessential in the first place. The definition that suggests that—and, in fact, I have the directive here, “essential employees are only those where, if they were unable to perform their jobs, the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.”

There's an inconsistent application of that criteria, but the functioning of the Federal Government goes far beyond that. Obviously, national park officials, for example, are not going to be involved in the safety of human life or protection of property, for the most part, but they are important for the proper functioning of the Federal Government.

The people who issue visas. We had any number of people in my jurisdiction—I'm sure they are throughout the country—who needed visas, who needed to be able to travel, but couldn't get them. One woman's family member was dying and she couldn't get there because the people who would have issued her a visa were not able to get to work. The Social Security applications, the applications for veterans benefits were not processed when they were supposed to be, when people were eligible. The fact is that millions of dollars was wasted every day that should have been collected and wasn't.

I know we're going to find a number of discrepancies between the various Federal agencies in the way that they interpreted the

guidelines. As a result, some were harder hit than others, not just because some of the functions relate to the safety of human life and protection of property more than others, but because of different interpretations. I think that's due to a sincere effort to do the right thing and simply differences in honest judgment.

The hearing that we are having today is particularly important because it could happen again. The continuing resolution expires on December 15. It is conceivable we could have another government shutdown at that time. We are making absolutely no progress on the 7-year balanced budget bill. We have agreed on how many people are going to sit at the table and what table it is, but we haven't gone beyond that.

That being the case and the fact that we are running out of time, I don't see any possibility of all these bills being resolved, so a continuing resolution is clearly going to be necessary. I would hope there would be a simple extension of the continuing resolution. If there is not, then the public is going to be absolutely right in identifying the source of the problem, and it is us, as far as I'm concerned. Back in 1990, almost two out of three taxpayers figured it was the Congress' fault, and the figures were almost identical this year, as well. I think they are going to be higher if it happens again.

So I think it behooves us to take measures now to avert this. One of the things that we could do is to pass legislation, and it ought to originate in this subcommittee, that I have introduced and Congressman Gekas, from Pennsylvania, has introduced, that would have Federal employees go to work in the event of any lapse of appropriations. They would be reimbursed after the fact, but at least the taxpayer would get effort for the money that is being paid for Federal employees' salaries. It would not disrupt the ability of the Federal employee work force to serve the public.

Speaker Gingrich made it clear, in a letter that he gave to Republican Members of the Congress, that he was committed to paying all Federal employees, including those who were furloughed. So this simply ensures that they would be performing work during that period of time. I can't imagine why people would be opposed to that other than for the political leverage that it gains people to be able to threaten the possibility of a government shutdown. That's wholly irresponsible.

I think we also need to take into consideration the people employed in the private sector who were severely and adversely affected by the shutdown, people in the services, the retail sector, and government contracting and procurement. The losses that they suffered are not made up. They don't get any retroactive pay. And particularly in this Washington area, there's a lot of people who were hurt unjustifiably and unnecessarily.

It's H.R. 2184 that we have introduced. I would hope we would consider that in this subcommittee and pass it on in an expeditious fashion.

Beyond that, I am anxious to get into this hearing Mr. Chairman. I am glad we have the occasion to see how it worked, and I hope, even more importantly, to get to work to make sure that this does not occur again. Thank you.

[The prepared statement of Hon. James P. Moran follows:]

COMMITTEE  
ON  
GOVERNMENT REFORM  
AND OVERSIGHT  
SUBCOMMITTEE ON CIVIL SERVICE  
RANKING MINORITY MEMBER

COMMITTEE  
ON  
INTERNATIONAL RELATIONS

SUBCOMMITTEE ON  
INTERNATIONAL OPERATIONS  
AND HUMAN RIGHTS

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4608**

**JAMES P. MORAN**  
8TH DISTRICT OF VIRGINIA

WASHINGTON OFFICE  
405 CANNON HOUSE  
OFFICE BUILDING  
WASHINGTON, DC 20515-4608  
(202) 225-4376

Statement of Rep. James P. Moran  
On the Government Shutdown  
Subcommittee on Civil Service  
December 6, 1995

Mr. Chairman:

I appreciate your having this hearing today and focusing on this important subject.

This was the furlough that never should have happened. Congress did not pass the Budget Reconciliation and had not passed a majority of the appropriations bills. Congress then exacerbated its own failures by submitting a continuing resolution calculated to draw a Presidential veto. As the press reported, all of this was done because the Speaker didn't get a window seat on Air Force One. Congress then failed to rectify the situation and pass a clean CR until the end of the week. Even though all employees were paid and no employee was harmed by the shut-down, 40% of the federal government did not operate for four days because of bickering between the Congress and the President and pure pettiness.

It is very important to stress that those employees sent home were not "non-essential" employees. They were non-emergency employees whose jobs did not directly affect human life or property. National Park officials are not emergency employees, but they are essential to the operations of our national park system. Personnel officers are not emergency employees, but they are essential to ensure that federal employees get paid. To claim that the government should be reduced by 800,000 employees, as some Republican freshman have done, because 800,000 employees were furloughed is absurd. This Subcommittee should never fall into that trap.

There were wide discrepancies among the agencies. Different agencies interpreted the direction from the Justice Department differently. But this is more indicative of a honest effort to follow the guidelines than a concerted effort to play games with the shut-down. Some agencies were harder hit than others. Some agencies have less of a tie to protecting human life and property than others. And no agency was prepared for the severity or length of the shut-down. In the past, when the Congress and Administration were unable to agree on a CR or a budget bill,

there was an honest effort to, at a minimum, ensure the continuing operations of the government while the process continued. This Congress is different. This Congress does not worry about the collateral damages it creates as it continues on its ideological juggernaut. An example of this irresponsibility is the Speaker's unwillingness to work with the Administration to pass the final appropriations bills. As members of the House leadership have stated, the Congress is unwilling to ensure the proper operation of the government because they fear they might lose leverage with the President on the budget. This is not the way government is supposed to operate. This is not the way a responsible Congress acts.

This hearing is appropriate because it appears as if we may be heading towards another shut-down on December 15. Ten days before Christmas, we will once again unnecessarily threaten the jobs security and income of federal employees to make partisan political points. We will compromise the efficiency and effectiveness of the federal government to play political games. If anything is to come out of this hearing, it must be the message that shutting down the government is dangerous, short-sighted, and extremely irresponsible. The fault for this action rests solely with the Congress and, as the polls continue to show, the public is not fooled by Congress's attempts to point fingers. In October of 1990, about 57% of the public blamed Congress for the government shut-down. About 25% blamed the President. In November of 1995, the numbers were exactly the same.

This past experience and the possibility of a repeat during the Christmas season demonstrates the immediate need for legislation such as I have introduced and Rep. Gekas has introduced that provides for continued government operations in the event of a lapse in appropriations. In essence, these bills are permanent continuing resolutions that take effect whenever the Appropriations Committee fails to pass its bills. It provides that the agencies can continue operations at prior funding levels and any costs incurred are taken out of the appropriations once enacted. This bill saves money because it allows the government to continue operating, and continue raising revenue, during a lapse in appropriations. As recent news reports have stated, the cost of the November shut-down was in excess of \$700 million. This is a lot of taxpayer money to waste in order to make a political point.

One of my bills, H.R. 2184, differs in that it only applies to government employees. It ensures that government employees will continue to be paid during a budget crisis period. While it is true that federal employees were paid for the last shut-down, it is also true that a number of Republican members objected to the retroactive pay. Federal employees, who play no part in the political games leading to a shut-down, should not be penalized for the inability of the Congress to pass its Appropriations bills. Since this bill was referred to the Government Reform

Committee rather than the Appropriations Committee, it is my hope that we can mark-up the bill and have it enacted before we allow another government shut-down to occur. We should take this opportunity to learn our lessons and make any necessary corrections.

Again, I appreciate your having this hearing today and I look forward to the testimony of our witnesses.

Mr. MICA. I thank the gentleman and would now like to yield to the chairman of the full committee who has joined us this morning, Mr. Clinger from Pennsylvania.

Mr. CLINGER. Thank you very much, Mr. Chairman, and thank you also for holding this hearing on the effect of the partial shutdown of the Federal Government on civil service staff and government functions.

A great deal of planning and work went into the shutdown plans of the agencies, and we are here to learn about the actions taken by the Federal cabinet departments and independent agencies to prepare for a possible appropriations impasse, whether they took the appropriate steps to troubleshoot their own plans and asked for help when they needed it from the Office of Management and Budget.

I think we also want to know what actions OMB and/or the Department of Justice and the Office of Personnel Management took to assist in the planning, to help guide the agencies and to troubleshoot the problem areas before a funding hiatus occurred.

Dr. Rivlin and numerous other administration officials were commenting publicly on the potential shutdown of the government really for months before it actually took place. As early as July 26, I believe, Dr. Rivlin cautioned agencies to "take no actions such as reductions in force, office closings, or similar measures, until we have had time to assess the developing situation and put together a governmentwide plan," was her quote.

By memo dated August 17 of this year, she directed the agencies to develop and submit for review any plans that "you believe are appropriate," she said, and she assured the agencies that OMB would "review plans promptly and get back to the agencies with suggestions." And again, on November 9, she instructed agencies to begin to implement the plan "as approved by OMB in September."

So, clearly, OMB had been planning for the funding hiatus since mid-summer and had also accepted full responsibility for reviewing and approving the plans and otherwise managing a cessation of government operations. However, we find that, during the shutdown, inconsistencies became apparent in the treatment and status of employees who perform very similar, if not identical, functions.

For example, the Department of Veterans Affairs makes benefit payments for pensions and compensation. In its shutdown procedure, the VA strictly adhered to the Antideficiency Act, and veterans compensation was determined to be unpayable because it is funded through annual appropriations. The Social Security Administration also, however, makes payments for pensions and compensation. But here, even though the Social Security Administration is funded through indefinite appropriations, the SSA shut down to only 7 percent of its work force.

On what basis, then, were these disparate decisions made? Is this a distinction based on funding stream only?

I am also curious to know whether sufficient guidance was given by OPM for the agencies to adequately prepare their shutdown contingency plans. The contingency plan of the Department of Health and Human Services was a mere two pages long, one of which was a chart, and the other a cover memo to Nancy Ann Min of the Office of Management and Budget. By contrast, the contingency plan

for the U.S. Department of Labor was impressive and extensive, 184 pages long, with the Treasury Department a close second at 174 pages long.

In its review of the plans, did OMB consider the HHS shutdown plan to be adequate at two pages? Also, why were certain safety functions which are necessary to protect human life treated differently, as we understand it?

The Mine Safety and Health Administration had more than 1,400 safety inspectors on duty during the furlough. By contrast, OSHA, the Occupational Safety and Health Administration, retained a staff of about 250. No child labor inspectors were retained. Do child labor inspectors perform a safety function? I really continue to be somewhat puzzled by this apparently disparate treatment of safety functions, and I look forward to hearing an explanation of this issue from the Department of Labor this morning.

Were any of these inconsistencies observed by OMB in their review of the plans, and of what did OMB's review and approval process consist? The bottom line is, how was this shutdown managed?

In 1994, the Office of Management and Budget merged its budget and management functions. At that time, I sent a letter to then Director Panetta expressing my concern. I was joined in that by then Chairman Conyers, expressing our concern about the impact of the OMB's reorganization on its management of the Federal Government.

In examining this shutdown, I am again concerned that the management functions of OMB have been overshadowed by the ongoing budget work. Frankly, I am concerned that OMB may not have reviewed the shutdown plans thoroughly enough, at least on the basis of the information we have seen so far. If they had, it seems that they would have seen these serious inconsistencies in the plans and would have taken steps to address them.

The partial shutdown of the Federal Government is an extremely complex process. If we have learned nothing else with this exercise, we have learned exactly how complex and complicated it is. It requires a tremendous amount of planning and sound judgment. It is my hope that OMB will assess the responsibility it has for properly managing future shutdowns so that expectations are fair and clear, and confusion and inconsistency are minimized. Frankly, we hope that we never have to go through this again, but, if we do, it surely needs to be better thought out beforehand.

Finally, I wonder whether the subcommittee might consider recommending that there be a process within OMB by which shutdown plans will be reviewed and through which agencies can formally resolve questions and appeal those decisions.

I want to thank you, Mr. Chairman. I would ask unanimous consent that the letter I referred to, from myself and Mr. Conyers to Mr. Panetta, with regard to the management functions of OMB, dated June 21, 1994, be included in the record at this point.

Mr. MICA. Without objection, so ordered.

[The information referred to follows:]

ALVIN CONVERSE JR. MICHIGAN  
OR ALABAMA

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ONE HUNDRED THIRD CONGRESS

## Congress of the United States House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

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WASHINGTON, DC 20515-8143

June 21, 1994

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The Honorable Leon E. Panetta  
Director  
Office of Management and Budget  
725 17th Street, N.W., Room 252  
Old Executive Office Building  
Washington, D. C. 20503

Dear Mr. Director:

As you know, we are interested in the changes, announced as OMB 2000, which are designed to improve the Office of Management and Budget's oversight by integrating the budget analysis, management review, and policy development roles. We share your goals to improve the breadth and quality of the analysis that goes into the budget and to strengthen OMB's ability to oversee agency programs and policies.

We are, however, concerned about the impact of the reorganization on the legislative mandates within the jurisdiction of the Committee on Government Operations. It is important to us that the strength and operational effectiveness of the Office of Information and Regulatory Affairs, the Office of Federal Procurement Policy, and the Office of Federal Financial Management be maintained. We further want to ensure that broad management initiatives such as the Paperwork Reduction Act, the Chief Financial Officers Act, and the Government Performance and Results Act be effectively implemented. We understand that you anticipate that the new Resource Management Offices will strengthen OMB in this regard by employing interdisciplinary teams that can take a more integrated approach to management issues. We would like more detailed information on your strategy for implementing these changes.

We also seek assurance that as former "management office" staff are assigned to the Resource Management Offices and as energy is devoted to making those interdisciplinary teams work, the functioning of the statutory offices and the implementation of the broad management initiatives do not suffer. We are interested in the specific objectives and measures you will use to gauge success. This information will serve as the basis toward reaching agreement with you on criteria we all can use to judge progress. We have called upon the General Accounting Office to assist us in our review.

The Honorable Leon Panetta  
June 21, 1994  
Page 2

We look forward to a constructive conversation on these issues.

Sincerely,

  
John Conyers, Jr.  
Chairman

  
William F. Clinger, Jr.  
Ranking Republican

Mr. MICA. I thank the gentleman for his opening statement, and I will yield now to Mrs. Morella. Mrs. Morella from Maryland is recognized for her opening statement.

Mrs. MORELLA. Thank you, Mr. Chairman.

I want to commend you for convening this hearing. Last month we experienced the longest government shutdown in our history. So, for me, there is no more opportune time to examine the criteria used by the administration to determine what functions would remain operational during the shutdown, particularly with December 15 staring us in the face.

I didn't want a shutdown. No member of this subcommittee or full committee wanted it. The shutdown was a terrible experience. It was a demoralizing and divisive ordeal for our work force. It was costly and disruptive to the taxpayers. It hurt a number of businesses, particularly in this local area.

Clearly, I wish the President could have signed a continuing resolution that would have kept the entire government running. But, for me, this hearing is not about that; this hearing is about reviewing the policies and the implementation of those policies, so we can devise solutions to better determine what needs improving and to fix what is broken. It is also about sitting here and talking through this matter, so that, just maybe, we wouldn't have to be in this position again.

There are issues that need to be reconciled. I have a hard time understanding, for instance, why cancer researchers were not considered essential. I think most of you know how cancer has affected my life. I'm not certain, but I've heard also that AIDS research may have been affected during this period. The fact that the Department of Veterans Affairs was recalling employees to process claims for disabled veterans indicates some confusion over how the policy was implemented. Our veterans need special treatment. If the current policies don't afford this treatment, let's fix them.

Before I conclude my statement, there are two other issues that I think need to be addressed. I have been reading statements in the paper and hearing people say that Federal workers who were furloughed came out ahead because they received their pay. And I was one who advocated that they not be victimized. Now I realize there is a question of equity out there, and we need to examine that in the future.

But I find that these statements are highly offensive and insensitive, and an affront to the dedicated men and women who serve this Nation and who, through no fault of their own, were furloughed. I don't know how you come out ahead after having to wear the demoralizing title of "nonessential." I don't know how you come out ahead while you are sitting at home wondering how long it will last and how you and your colleagues will pay your bills in the interim. There was not one Federal worker screaming, "Please, please furlough me." So I hope that this will be an end to that kind of rhetoric.

I also feel that the term "nonessential" must be eliminated from the Federal vocabulary. I can't think of a term more misguided or misleading. And with that said, I again want to thank Chairman Mica for calling the hearing, for his indulgence, and also look forward to hearing from the witnesses.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady and now would like to yield to the vice chair of the subcommittee, Mr. Bass from New Hampshire.

Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman.

I have an opening statement that I would like to submit for the record and to simply comment. Thank you for holding the hearing this morning. I am looking forward to hearing the testimony from our witnesses. I agree with my colleague, Mrs. Morella, that the term "nonessential" does not necessarily mean unneeded or unnecessary.

I think what we need to determine, in the course of these hearings, is what the nature, what the effect of the shutdown was on the operation of government; the difference between what worked and what didn't work in government; what was reactive versus proactive, in terms of government activities. Perhaps we can learn more about the internal workings of the Federal bureaucracy, and perhaps what we can learn from this experience is how to run a better, more efficient government, but certainly not stereotype anybody who was furloughed as being "nonessential."

I want to thank the chairman for calling these hearings. I think they are important; I think they are timely. I look forward to hearing this testimony today.

I yield back.

[The prepared statement of Hon. Charles F. Bass follows:]

Bass

Opening Statement of the Honorable Charles Bass  
 Vice Chairman, Civil Service Subcommittee  
 Hearing on Government Shutdown  
 December 6, 1995

Mr. Chairman, I want to thank you for holding this hearing, and for focusing the agenda so squarely on the planning and implementation of the recent shutdown of the federal government. Controlling excessive federal spending is essential to fulfilling our commitment to the American people, and this hearing will help to focus attention on that central question.

I will focus my opening remarks on the "Open Letter to Federal Employees" by the President and Vice President, which I would like to submit for the record. I believe that this letter has only served to divert attention from the real issues raised by the shutdown. As our hearing title makes clear, the essential character of federal employees is not the question; the less-than-essential character of many federal functions is.

As Governor Fife Symington demonstrated in Arizona, where states and localities believe that parks are essential to their communities, they are willing and able to sustain operations. As millions of parents around the country demonstrate every day, federal intervention is not always necessary to provide quality education; making certain that children have opportunities for quality education at every level is primarily the responsibility of parents, not bureaucracies. Successful rehabilitation of many patients is accomplished every day by doctors, nurses, therapists and other skilled practitioners who work with families and friends to facilitate their patients' rehabilitation. Every day, millions of Americans depend on the private sector, relying on both for-profit and not-for-profit organizations to improve their lives. These private citizens also generate the tax revenue that was once the life-blood of big government before big government borrowed our nation beyond the bounds of spending restraints.

For nearly twenty years, our citizens have been sending a message to everyone who must face the electorate. As President Reagan phrased that message, "The problem is not that Americans aren't taxed enough. The problem is that government spends too much." The Liberal establishment in Washington has resisted that message, and the administration's "Open Letter to Federal Employees" is merely another effort to divert attention from that message in order to protect big government bureaucracies.

This Congress was willing to enact continuing resolutions that would have averted this latest shutdown. We do not believe that the same scenario should be repeated in December, and we welcome this opportunity to clarify guidelines and to ensure the continued operation of every government function that has authorized and appropriated funding sources. If there were mistakes in implementing the first shutdown, they should not be repeated if there is a second one. None of our interests would be served by allowing that to happen.

In closing, I would observe that Congress and the President are not that far apart from agreement on principles to bring our Nation's budget into balance. We need to eliminate the nonessential programs so that government employees can redouble their efforts and become more effective in delivering on the essential functions of government.

Mr. MICA. I thank the gentleman and now yield to Mr. Horn from California.

Mr. HORN. Thank you very much, Mr. Chairman. I appreciate the opportunity to sit with your subcommittee during these hearings. As chairman of the Subcommittee on Government Management, we have major concerns about the processes by which these decisions were made.

Let me just say that I agree with what I have heard from the gentleman from Virginia, the chairman, the gentlewoman from Maryland, and the gentleman from New Hampshire. There are a lot of significant questions, and I commend you for these hearings. I hope you will recommend to the full committee, and thus the House, the criteria by which these decisions have been made.

My particular concern comes on an incident that occurred in my own district, and that is the Department of Defense withdrew the C-17 inspectors from the line. And if this shutdown had lasted a few more days, approximately 5,000 to 10,000 workers would have been furloughed, because there's no way you can keep production going unless the appropriate inspection has been made along the way.

Now, if that policy was across the Nation, which I suspect it was, talking to various officials in the Pentagon, I think it is a wrong-headed policy that would damage this economy by the billions, but, more particularly, it would damage the efficiency of defense production, which has taken a long time, on the C-17 and other major projects, to be developed. And now that it's efficient, this kind of nonsense, of pulling C-17 inspectors and other defense production inspectors, I think needs a very careful review by this committee.

Mr. Chairman, I would like to enclose, at this point in my remarks, a statement I have made that raises some fuller questions.

I do hope, whether I'm in the room or not, that you and your colleagues will ask, did the White House directly or indirectly urge any particular closures? Because another series of closures that irks me deeply is the fact that park rangers are pulled from various national monuments, when people have saved money for 5 to 10 years to finally see those national monuments, and they are unable to do it, not to mention, of course, the Social Security field offices and all the other things we all know about.

[The prepared statement of Hon. Stephen Horn follows:]

**Statement of Representative Stephen Horn**  
**Hearing on Government Shutdown - What's Essential?**

A review of the agency shutdown plans shows that some agencies treated similar functions, such as public affairs, training, and payment of benefits, very differently. It seems that agencies received very little guidance on how to decide on which employees were essential and which could be furloughed. They had to muddle through on their own, and a few, such as the Department of Veterans Affairs and the Social Security Administration, apparently underestimated their responsibilities because they had to make hurried preparations to recall employees to avoid a delay in distributing benefits payments. Leadership from an oversight agency was conspicuous by its absence.

The Office of Management and Budget and the Department of Justice apparently were less than responsive to requests for guidance from the agencies. Today we would like to ask the representatives of OMB and Justice why this happened. Was it an oversight on their parts? Did they not have enough staff to monitor the agencies in their development and submission of shut down plans? Did they decide to adopt a "hands-off" approach and see what happened, hoping it would

-2-

embarrass Congress? It will be interesting to hear from them what their reasons were. The results remain: agencies were left to their own devices, some making decisions to keep employees working if they were paid out of multi-year or no-year appropriation, some retaining only those employees involved in protecting life or property. Some departments shutting down almost completely, some remaining almost fully staffed. There was no coordination among the agencies.

These are important management issues. We are trying to ensure that Government management improves. This shut down shows that at present Government management is barely adequate. Government agencies are operating in a vacuum, without taking into account what other agencies are doing. They are given no guidance or leadership. We need to have, within the Administration, an office able and willing to: take control of a situation; develop overall guidelines; make sure the agencies follow the guidelines consistently; and ensure that similar functions are treated consistently across all agencies performing those functions.

It seems that this was lacking in the shut down that occurred from November 14 to 18. The administration must make sure that any future shut downs are managed better.

Mr. MICA. I thank the gentleman.

Without objection, the statement will be made part of the record. I also have a statement and a request from Cardiss Collins, the ranking member of the full committee, and, without objection, her statement will be made part of the record.

[The prepared statement of Hon. Cardiss Collins follows:]

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### STATEMENT OF HON. CARDISS COLLINS, RANKING MEMBER COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE HEARING ON THE GOVERNMENT SHUTDOWN: WHAT'S ESSENTIAL?

November 21, 1995

Mr. Chairman, during the days preceding the recent government shutdown, the question of "What's Essential" was repeatedly asked by front-line employees across the Federal work force, and by the American public. The workers wanted to know whether or not they would be furloughed, and if so, what the consequences would be with respect to their pay and benefits. The public wanted to know whether services they depended upon would be available to them.

I understand that the Administration took a number of actions to inform both the workers and the public about effect a shutdown of the government would have on them. Whether or not these actions, and the determination of "What's Essential" which guided them, were reasonable and adequate should be the focus of today's hearing. I would hope that Members not use this hearing instead to continue the carping and finger pointing which has surrounded the debate over the budget.

As we approach December 15th, and the prospect that a shutdown could reoccur, the public, Members of Congress, agency managers, and Federal and District of Columbia government workers alike all can benefit from the clarity of policy and procedure that this hearing could bring.

The Department of Justice has issued three legal opinions addressing the permissible scope of government operations during a shutdown caused by a lapse in appropriations. The most recent one was prepared this past August by Assistant Attorney General Walter Dellinger and was distributed to agencies by the Office of Management and Budget to assist them with the development of plans for managing a shutdown, were it to occur.

The Dellinger opinion states that the Antideficiency Act prohibits the employment of federal personnel in advance of appropriations except in emergencies. It further states that the emergencies exception applies only to cases of a threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response. Those employees who met this test were to be deemed essential and required to work. In addition, other employees whose jobs are funded with multi-year appropriations, or who meet other limited exceptions could report to work as well.

This guidance seems quite clear, yet there are reports it was applied inconsistently. Therefore, it is appropriate for this Subcommittee to examine the manner in which this guidance was disseminated and the manner in which agencies determined which of their personnel were essential. The array of witnesses scheduled to appear today should provide that information. I look forward to their testimony and the insight it will provide.

Thank you, Mr. Chairman.

Mr. MICA. I have also had requests, I might say, from a number of Members now—it's growing—to testify and comment on the question of the impact of the shutdown and how we proceed. We are going to hold a Members' panel next Tuesday at 1:30 and give all of the Members who wish an opportunity to be heard at that time. If any Members do have a statement they would like to have made a part of the record today, we will also be glad to include that in the text. In order to be fair to everyone, I think we will proceed in that fashion.

I would like to now call our first panel. We have them before us: Dr. Walter Broadnax, Department of Health and Human Services; Dwight Robinson, Department of Housing and Urban Development; Thomas Glynn, Department of Labor; George Muñoz, Department of the Treasury; Eugene Brickhouse, Department of Veterans Affairs; and Shirley Chater, the Commissioner of the Social Security Administration.

Some of you have appeared before us before; some of you are new members. This is an investigations and oversight subcommittee and committee of Congress, so if you would please stand, I would like to administer the oath.

[Witnesses sworn.]

Mr. MICA. The witnesses have answered in the affirmative.

Again, I would like to welcome our panelists. Since we have several lengthy panels here, we are going to use the 5-minute rule. You are asked, if you have a lengthy, detailed statement, to submit it for the record, and it will be made part of the official record. We would appreciate your summarizing so that the members of the subcommittee will have an opportunity to discuss and ask questions.

We will start, first, by having a statement by Dr. Walter Broadnax, Deputy Secretary of the Department of Health and Human Services.

Welcome, and you are recognized, sir.

**STATEMENTS OF WALTER BROADNAX, DEPUTY SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES; DWIGHT ROBINSON, ACTING DEPUTY SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; THOMAS P. GLYNN, DEPUTY SECRETARY, DEPARTMENT OF LABOR; GEORGE MUÑOZ, ASSISTANT SECRETARY FOR MANAGEMENT AND CHIEF FINANCIAL OFFICER, DEPARTMENT OF THE TREASURY; EUGENE A. BRICKHOUSE, ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS; AND SHIRLEY CHATER, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Mr. BROADNAX. Thank you, Chairman Mica and members of the committee, for the opportunity to speak to you today concerning the Department of Health and Human Services' implementation of the recent government shutdown. Mr. Chairman, this is my oral statement. I have submitted my full testimony for the record.

The first casualty of a shutdown is the morale of our employees who were incorrectly termed "nonessential." I want to make the point clearly that all HHS employees are essential. During a lapse in appropriations, some employees may continue to work as a mat-

ter of law, others may not; a distinction made by law, not by the value of their work.

The HHS shutdown plan was developed and implemented in accordance with existing laws and guidelines contained in the legal opinions developed by the Department of Justice and OMB guidelines. Consequently, HHS determined that 33,600, or 55 percent, of our employees would continue to work during the shutdown, because their work was excepted. HHS had to furlough approximately 27,500, or 45 percent, because their work was not classified in one of the excepted categories.

The Secretary and the Deputy Secretary kept HHS employees advised of key developments regarding a possible shutdown. The Secretary met personally with the heads of HHS operating divisions prior to the shutdown and assured them that she considered each and every one of our employees and the services that they provide to be essential. However, it was made clear to them that normal business would have to be suspended for the duration of the shutdown, consistent with legal requirements.

I am proud of the efforts made by our shutdown team, who prepared a shutdown plan and managed that plan once OMB officially announced a shutdown. Their efforts enabled HHS to proceed in an orderly manner to implement the shutdown. The team met frequently before and during the shutdown, and provided a vital focal point for information and guidance about the shutdown.

It was necessary for the team to consider adjustments to the shutdown plan after initial implementation, since circumstances changed as the shutdown continued. For example, following the President's announcement that new Medicare beneficiaries should be enrolled during the shutdown, HHS identified employees of the Health Care Financing Administration, HCFA, who provided these services, and prepared to call them back to work.

What about the costs of shutdown? They are extremely difficult to determine. Besides employee morale, we know that roughly \$5 million a day was lost due to HHS wages and rent. But there were significant nonpersonnel costs to the shutdown, as well. Each day we had to turn away 10,000 new Medicare applicants. New patients could not be accepted into clinical research at the NIH clinical center; an average of 170 patients enter each week. The Centers for Disease Control ceased disease surveillance; therefore, information about the spread of disease, such as the flu and AIDS, was unavailable.

The shutdown gave a holiday to deadbeat dads, since we had to shut down the parent locator service to which is referred, on average, 15,000 to 20,000 cases per day. Hotline calls to the NIH concerning diseases could not be answered, and calls to our Inspector General concerning fraud and abuse could not be referred.

Fortunately, the effects of the shutdown did not have an impact on some of our customers. For example, the Medicaid and Aid to Families With Dependent Children programs were already funded for the first quarter, prior to shutdown, from advanced appropriations, and Medicare claims were paid from trust funds, which were not affected by the shutdown. But these Medicare claims were paid by contractors who could not be paid during the shutdown and who

would have to cease Medicare payments if their cash ran out due to a longer hiatus.

The impact of another shutdown on December 15 would be substantially worse. We would have all the same problems that we encountered in November, but we would add to them the lack of available funding for Medicaid, AFDC, and foster care, and all the other programs that are due to be funded for the second quarter on January 1, 1996. These grants are prepared and then awarded on January 1. This affects approximately 4,500 grant awards, totaling more than \$28 billion.

Clearly, shutdown of the government is in no one's interest. The public is left without services that affect the most vulnerable among us. States are left to support a myriad of services that they cannot afford alone. Contractors providing excepted services, such as Medicare claims payment, are left in the position of either floating the government through the crisis or suspending payments.

And employees are told they cannot come to work and do their jobs providing services, tracking diseases, and caring for the elderly in the people's department, simply because their job does not meet the legal definition of an excepted function.

I am sure you will agree that these costs are simply too high for the country to bear, and therefore we must do all within our power to avoid another shutdown.

Thank you, Mr. Chairman. I would be happy to answer any questions the committee may have.

[The prepared statement of Mr. Broadnax follows:]

TESTIMONY OF  
DR. WALTER BROADNAX, DEPUTY SECRETARY,  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
BEFORE THE HOUSE GOVERNMENT REFORM AND OVERSIGHT  
SUBCOMMITTEE ON CIVIL SERVICE  
HEARING ON HHS IMPLEMENTATION OF THE GOVERNMENT-WIDE SHUTDOWN  
DECEMBER 6, 1995

THANK YOU CHAIRMAN MICA AND MEMBERS OF THE COMMITTEE FOR THE OPPORTUNITY TO SPEAK TO YOU TODAY CONCERNING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES IMPLEMENTATION OF THE RECENT GOVERNMENT-WIDE SHUTDOWN WHICH RESULTED IN THE FURLOUGH OF 300,000 FEDERAL WORKERS WHO PROVIDE VITAL SERVICES TO THE AMERICAN PEOPLE.

THE FIRST CASUALTY OF A SHUTDOWN IS MORALE, ESPECIALLY THE MORALE OF OUR EMPLOYEES WHO WERE INCORRECTLY TERMED "NON-ESSENTIAL". BEFORE TURNING TO SOME OF THE SPECIFICS OF THE HHS IMPLEMENTATION, I WANT TO MAKE THE POINT THAT ALL HHS EMPLOYEES ARE ESSENTIAL. DURING A LAPSE IN APPROPRIATIONS SOME EMPLOYEES MAY CONTINUE WITH THEIR WORK AS A MATTER OF LAW; OTHERS MAY NOT. BUT IT IS A DISTINCTION MADE BY LAW, NOT BY THE VALUE OF THEIR WORK.

- OUR FURLOUGHED EMPLOYEES WHO CONTROL AND PREVENT DISEASE ARE ESSENTIAL;
- OUR FURLOUGHED EMPLOYEES WHO ISSUE AND MONITOR HEAD START GRANTS ARE ESSENTIAL;
- OUR FURLOUGHED EMPLOYEES WHO INVESTIGATE MEDICARE FRAUD ARE ESSENTIAL.

ALL OF OUR EMPLOYEES ARE ESSENTIAL. THE LAWS AFFECTING SHUTDOWN WILL ALLOW SOME TO WORK AND OTHERS, I REGRET, WILL NOT BE ALLOWED TO WORK BY LAW.

PAGE 2

THE HHS SHUTDOWN PLAN WAS DEVELOPED AND IMPLEMENTED IN ACCORDANCE WITH EXISTING LAWS AND GUIDELINES CONTAINED IN THE LEGAL OPINIONS DEVELOPED BY THE DEPARTMENT OF JUSTICE AND OMB GUIDANCE. FOLLOWING THESE REQUIREMENTS, HHS DETERMINED THAT 33,600 OR 55% OF OUR EMPLOYEES WOULD CONTINUE TO WORK DURING THE SHUTDOWN BECAUSE THEIR WORK WAS "EXCEPTED":

- 12,300 CONTINUED TO WORK BECAUSE THEY WERE PROVIDING EITHER DIRECT HEALTH CARE OR PERFORMING ACTIVITIES INVOLVING THE IMMINENT THREAT TO SAFETY OF HUMAN LIFE. THIS INCLUDES, FOR EXAMPLE, OUR NATIONAL INSTITUTES OF HEALTH (NIH) CLINICAL CENTER EMPLOYEES AND OUR INDIAN HEALTH SERVICE EMPLOYEES IN THEIR HOSPITALS AND CLINICS.
- 11,000 CONTINUED TO WORK BECAUSE THEIR PROGRAMS AND SALARIES WERE NOT AFFECTED BY A LAPSE IN APPROPRIATIONS (THIS IS PRIMARILY MADE UP OF EMPLOYEES IN THE FOOD AND DRUG ADMINISTRATION WHOSE APPROPRIATIONS WERE ENACTED IN THE AGRICULTURE BILL. OTHER EXAMPLES INCLUDE THE AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ATSDR) EMPLOYEES FUNDED BY THE SUPERFUND.
- 5,000 CONTINUED TO WORK BECAUSE THEY HOLD OFFICES ESTABLISHED BY LAW (PREDOMINANTLY MEMBERS OF THE PUBLIC HEALTH SERVICE COMMISSIONED CORPS).
- 3,000 CONTINUED TO WORK BECAUSE THEY WERE PERFORMING ACTIVITIES INVOLVING THE IMMINENT THREAT TO PROTECTION OF PROPERTY. THIS INCLUDES, FOR EXAMPLE, THE PROTECTION OF OUR ONGOING MEDICAL EXPERIMENTS AND OUR LAB ANIMAL CARETAKERS IN THE NIH.
- 2,300 CONTINUED TO WORK TO CARRY OUT THE ACTIVITIES REQUIRED FOR ORDERLY

PAGE 3

SHUTDOWN. EXAMPLES OF THESE ACTIVITIES ARE BUDGET, FINANCIAL, AND LEGAL OPERATIONS NECESSARY DURING THE HIATUS.

HHS HAD TO FURLOUGH APPROXIMATELY 27,500 OR 45% BECAUSE THEIR WORK WAS NOT CLASSIFIED IN ONE OF THE ABOVE "EXCEPTED" CATEGORIES.

THROUGH A SERIES OF NEWSLETTERS, ELECTRONIC MAIL, AND OFFICE TO OFFICE VISITS, THE SECRETARY AND THE DEPUTY SECRETARY KEPT HHS EMPLOYEES ADVISED OF KEY DEVELOPMENTS REGARDING A POSSIBLE SHUTDOWN AND OF THE PRESIDENT'S COMMITMENT TO WORK WITH CONGRESS ON A BUDGET BILL THAT WOULD BE BENEFICIAL TO THE AMERICAN PEOPLE. THE SECRETARY MET PERSONALLY WITH THE HEADS OF HHS OPERATING DIVISIONS PRIOR TO THE SHUTDOWN AND ASSURED THEM THAT SHE CONSIDERED EVERY ONE OF OUR EMPLOYEES AND THE SERVICES THAT THEY PROVIDE TO BE ESSENTIAL. HOWEVER, IT WAS MADE CLEAR TO THEM THAT NORMAL BUSINESS WOULD HAVE TO BE SUSPENDED FOR THE DURATION OF THE SHUTDOWN CONSISTENT WITH LEGAL REQUIREMENTS. THEY WERE ALSO REMINDED OF THE PENALTIES ASSOCIATED WITH LACK OF ADHERENCE TO SHUTDOWN GUIDELINES; NAMELY, THAT THE OBLIGATION OF FUNDS IN ADVANCE OF APPROPRIATIONS (EXCLUDING THE EXCEPTIONS DISCUSSED ABOVE) IS A VIOLATION OF THE ANTIDEFICIENCY ACT, WITH PENALTIES RANGING FROM ADVERSE PERSONNEL ACTIONS TO FINES AND IMPRISONMENT.<sup>1</sup>

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<sup>1</sup>TITLE 31, SECTION 1350 OF THE U.S. CODE READS: AN OFFICER OR EMPLOYEE OF THE UNITED STATES GOVERNMENT OR OF THE DISTRICT OF COLUMBIA GOVERNMENT KNOWINGLY AND WILLFULLY VIOLATING SECTION 1341 (A) OR 1342 OF THIS TITLE SHALL BE FINED NOT MORE THAN \$5,000, IMPRISONED FOR NOT MORE THAN 2 YEARS, OR BOTH.

PAGE 4

I AM PROUD OF THE EFFORTS MADE BY OUR SHUTDOWN TEAM, CONVENED BY THE ASSISTANT SECRETARY FOR MANAGEMENT AND BUDGET AND DEPUTY CFO, WHO CARRIED OUT THE TASK OF PREPARING A SHUTDOWN PLAN AND MANAGING THAT PLAN ONCE OMB OFFICIALLY ANNOUNCED THE SHUTDOWN. THEIR EFFORTS ENABLED HHS TO PROCEED IN AN ORDERLY AND EFFICIENT MANNER TO NOTIFY AFFECTED EMPLOYEES AND TO IMPLEMENT THE SHUTDOWN WITHIN THE THREE HOURS SPECIFIED IN OMB GUIDELINES. THE TEAM, WHICH CONSISTED OF SENIOR MANAGEMENT OFFICIALS IN LEGAL, HUMAN RESOURCES, PROCUREMENT AND GRANTS POLICY, FINANCE AND OTHER KEY MANAGEMENT AREAS OF THE DEPARTMENT, MET FREQUENTLY BEFORE AND DURING THE SHUTDOWN. THE TEAM PROVIDED A FOCAL POINT FOR INFORMATION ABOUT THE SHUTDOWN AND WORKED CLOSELY WITH DESIGNATED SENIOR MANAGEMENT OFFICIALS ACROSS THE VARIOUS OPERATING AND STAFF DIVISIONS, INCLUDING REGIONAL OFFICIALS, WHO COORDINATED INFORMATION THROUGH OUR OFFICE OF INTERGOVERNMENTAL AFFAIRS.

IT WAS NECESSARY FOR THE TEAM TO CONSIDER ADJUSTMENTS TO THE SHUTDOWN PLAN AFTER INITIAL IMPLEMENTATION. SINCE CIRCUMSTANCES CHANGED AS THE SHUTDOWN CONTINUED, WE HAD TO EVALUATE ADJUSTMENTS TO THE NUMBER OF EXCEPTED EMPLOYEES. FOR EXAMPLE, FOLLOWING THE PRESIDENT'S ANNOUNCEMENT THAT AGENCIES SHOULD REVIEW THEIR SHUTDOWN PLANS IN LIGHT OF THE UNPRECEDENTED LENGTH OF THE SHUTDOWN, IT WAS DETERMINED THAT NEW MEDICARE BENEFICIARIES SHOULD BE ENROLLED DURING THE SHUTDOWN. HHS IDENTIFIED EMPLOYEES OF THE HEALTH CARE FINANCING ADMINISTRATION (HCFA) WHO PROVIDED THESE SERVICES AND PREPARED TO CALL THEM BACK TO WORK. ALSO, WE WERE PREPARED TO BRING BACK SEVERAL EMPLOYEES TO OUR PERRY POINT MEDICAL DEPOT TO FILL MEDICAL SUPPLY ORDERS FOR OUR INDIAN HEALTH SERVICE HOSPITALS. HOWEVER, THE AGREEMENT REACHED BETWEEN THE PRESIDENT AND

PAGE 5

CONGRESS TO END THE SHUTDOWN ON NOVEMBER 20 MADE IMPLEMENTATION OF THESE ACTIONS UNNECESSARY. HAD THE AGREEMENT NOT BEEN REACHED AT THAT TIME, APPROXIMATELY 100 EMPLOYEES WOULD HAVE BEEN RETURNED TO DUTIES THAT, DUE TO THE PROLONGED SHUTDOWN, HAD DEVELOPED INTO SAFETY OF HUMAN LIFE OR PROPERTY STATUS.

WHAT ABOUT THE COSTS OF SHUTDOWN? THEY ARE EXTREMELY DIFFICULT TO DETERMINE. BESIDES EMPLOYEE MORALE, WE KNOW THAT ROUGHLY \$5 MILLION A DAY WAS LOST DUE TO HHS WAGES AND RENT. BUT THERE WERE SIGNIFICANT NON-PERSONNEL COSTS TO THE SHUTDOWN AS WELL:

- EACH DAY WE HAD TO TURN AWAY 10,000 NEW MEDICARE APPLICANTS;
- NEW PATIENTS COULD NOT BE ACCEPTED INTO CLINICAL RESEARCH AT THE NIH CLINICAL CENTER (AN AVERAGE OF 170 PATIENTS ENTER EACH WEEK).
- THE CENTERS FOR DISEASE CONTROL CEASED DISEASE SURVEILLANCE. THEREFORE, INFORMATION ABOUT THE SPREAD OF DISEASE SUCH AS THE FLU AND AIDS WAS UNAVAILABLE.
- THE SHUTDOWN GAVE A HOLIDAY TO "DEADBEAT" DADS SINCE WE HAD TO SHUT DOWN THE PARENT LOCATOR SERVICE TO WHICH IS REFERRED, ON AVERAGE, 15-20 THOUSAND CASES PER DAY.

PAGE 6

-- HOT LINE CALLS TO THE NIH CONCERNING DISEASES COULD NOT BE ANSWERED AND CALLS TO OUR INSPECTOR GENERAL CONCERNING FRAUD AND ABUSE COULD NOT BE REFERRED.

FORTUNATELY, THE EFFECTS OF THE SHUTDOWN DID NOT HAVE AN IMPACT ON SOME OF OUR CUSTOMERS. FOR EXAMPLE, THE MEDICAID AND AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAMS WERE ALREADY FUNDED FOR THE FIRST QUARTER PRIOR TO SHUTDOWN FROM ADVANCE APPROPRIATIONS AND MEDICARE CLAIMS WERE PAID FROM TRUST FUNDS WHICH WERE NOT AFFECTED BY THE SHUTDOWN. BUT THESE MEDICARE CLAIMS WERE PAID BY CONTRACTORS WHO COULD NOT BE PAID DURING THE SHUTDOWN AND WHO WOULD HAVE TO CEASE MEDICARE PAYMENTS IF THEIR CASH RAN OUT DUE TO A LONGER HIATUS.

OTHER PROGRAMS HAD RECEIVED SMALL GRANTS UNDER THE TERMS OF THE FIRST CONTINUING RESOLUTION TO TIDE THEM OVER THE FUNDING CRISIS. BUT IF THE SHUTDOWN HAD CONTINUED -- OR IF IT OCCURS AGAIN -- MANY OF THOSE SERVED BY THESE PROGRAMS - THE VERY YOUNG, THE AGED, THE DISABLED - WOULD BE DENIED CRITICALLY-NEEDED SERVICES. FOR EXAMPLE, ON DECEMBER 1, 1995, APPROXIMATELY 122 HEAD START PROGRAMS, SERVING 60,000 CHILDREN, WERE SCHEDULED TO RECEIVE THEIR GRANTS. IN THE ADMINISTRATION ON AGING PROGRAMS WHICH PROVIDE COMPREHENSIVE SERVICES, INCLUDING MEALS, TO MANY SENIOR CITIZENS, SOME STATES INDICATED THAT THEY WOULD PROBABLY HAVE HAD TO CLOSE THEIR SERVICE DELIVERY PROGRAMS IF THE SHUTDOWN HAD CONTINUED MUCH LONGER. AT NIH, BESIDES DISRUPTION TO THE MANY RESEARCH RENEWAL GRANTS, WE ESTIMATE THAT AS MANY AS 2,000 NEW AND COMPETING AWARDS SCHEDULED TO BE FUNDED ON DECEMBER 1, 1995 WOULD HAVE HAD TO BE DELAYED UNTIL FUNDS WERE AVAILABLE. OBVIOUSLY, THE LONGER THE SHUTDOWN, THE MORE DISASTROUS THE EFFECTS

PAGE 7

WOULD BE ON THESE PROGRAMS WHICH AFFECT THE MOST VULNERABLE POPULATIONS.

THE IMPACT OF THE NOVEMBER SHUTDOWN WAS BAD ENOUGH, BUT THE IMPACT OF ANOTHER SHUTDOWN ON DECEMBER 15 WOULD BE SUBSTANTIALLY WORSE. WE WOULD HAVE ALL THE SAME PROBLEMS THAT WE ENCOUNTERED IN NOVEMBER, BUT WE WOULD ADD TO THEM THE LACK OF AVAILABLE FUNDING FOR MEDICAID, AFDC, AND FOSTER CARE, AND ALL THE OTHER PROGRAMS THAT ARE DUE TO BE FUNDED FOR THE SECOND QUARTER ON JANUARY 1, 1996. THESE GRANTS ARE PREPARED AND THEN AWARDED ON JANUARY 1. THIS AFFECTS APPROXIMATELY 4,500 GRANT AWARDS TOTALING MORE THAN \$28 BILLION DOLLARS. EXAMPLES OF VULNERABLE POPULATIONS IMPACTED INCLUDE: 13 MILLION AFDC RECIPIENTS; 273,000 FOSTER CARE CHILDREN; OVER 100,000 CHILDREN RECEIVING ADOPTION ASSISTANCE SERVICES; AND OVER 100,000 HEAD START KIDS.

IN ADDITION, WE ARE CONCERNED ABOUT THE LONG RANGE IMPACT ON OUR EMPLOYEES. DURING THE NOVEMBER SHUTDOWN, WE PROVIDED OUR EMPLOYEES WITH INFORMATION ON APPLYING FOR UNEMPLOYMENT COMPENSATION IN ORDER TO COVER POTENTIAL CASH-FLOW PROBLEMS. IF A LENGTHY SHUTDOWN WERE TO OCCUR IN MID-DECEMBER, EXTENSIVE EFFORTS WOULD HAVE TO BE MADE TO ADVISE EMPLOYEES ABOUT ALTERNATIVE EMPLOYMENT AND THE AVAILABILITY OF UNEMPLOYMENT BENEFITS.

CLEARLY, SHUTDOWN OF THE GOVERNMENT IS IN NO ONE'S INTERESTS. THE PUBLIC IS LEFT WITHOUT SERVICES THAT AFFECT THE MOST VULNERABLE AMONG THEM. STATES ARE LEFT TO SUPPORT A MYRIAD OF SERVICES THAT THEY CANNOT AFFORD ALONE. CONTRACTORS PROVIDING EXCEPTED SERVICES SUCH AS MEDICARE CLAIMS PAYMENT ARE LEFT IN THE POSITION OF EITHER FLOATING THE GOVERNMENT THROUGH THE CRISIS OR SUSPENDING PAYMENTS. AND EMPLOYEES ARE TOLD THEY CANNOT COME TO WORK AND DO THEIR JOBS

PAGE 8

PROVIDING SERVICES, TRACKING DISEASES, AND CARING FOR THE ELDERLY IN THE "PEOPLES' DEPARTMENT SIMPLY BECAUSE THEIR JOB DOES NOT MEET THE LEGAL DEFINITION OF AN "EXCEPTED" FUNCTION. I'M SURE YOU WILL AGREE THAT THESE COSTS ARE SIMPLY TOO HIGH FOR THE COUNTRY TO BEAR AND THEREFORE, WE MUST DO ALL WITHIN OUR POWER TO AVOID ANOTHER SHUTDOWN.

THANK YOU MR. CHAIRMAN AND I WOULD BE HAPPY TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.

Mr. MICA. I thank you, Dr. Broadnax. We are going to withhold questions till we finish the panel.

I would like to recognize now Mr. Dwight Robinson, who is acting Deputy Secretary of the Department of Housing and Urban Development.

Mr. ROBINSON. Thank you, Mr. Chairman and good morning.

I want to thank you for this opportunity to discuss the planning, implementation, and oversight of the recent shutdown of the government, including the Department of Housing and Urban Development. We believe that our actions followed the law, directions from OMB, the Department of Justice, and what was necessary under the regrettable circumstances. We are pleased to be able to answer your questions and to discuss with your committee how we thought through the process and how the plan unfolded.

Like most Federal agencies, HUD had experienced short-term shutdowns before, although the most recent lasted just a half day in 1990. In compliance with a series of OMB bulletins issued over the last 15 years, we had in place general guidance and procedures for implementing a shutdown. That possibility grew stronger late in the summer. In August and early September, the Department undertook a thorough legal review of opinions from the Department of Justice, and we also examined OPM instructions and OMB guidance to update and add detail to our plan for operations during a funding lapse.

The plan was submitted and reviewed by OMB in September. The plan is conceptual rather than administrative. It reviews each of the programs for which the Department is responsible, in terms of its legal authority to continue activities under the applicable statutes.

What we found was that the length of the funding hiatus really determines the work that can be done. In a 1- or 2-day lapse in funding, we require only minimal emergency staff to protect life and property, and provide for an orderly shutdown of activities. But a longer shutdown would require more HUD staff to perform activities necessary to protect life and property.

In October, we developed a contingency plan containing the administrative procedures and personnel guidance for implementing a shutdown. Employees were told of the possibility of a shutdown, advised of their personnel rights, and told how a furlough would affect benefits and employment. Employees, over a 2-week period, were provided with materials.

As we neared the critical date, assistant secretaries and program managers were asked to provide specific plans for a short-term shutdown, keeping only those few employees who would be protecting life and property or conducting the shutdown itself.

On Monday before the shutdown, November 13, through a headquarters public address system and a national conference call, the Secretary addressed all HUD staff, explaining the impending funding problems and the possibility of a furlough.

The shutdown began on the morning of Tuesday, November 14. OMB provided the official notice that employees should be released. Those employees who were excepted, per the plan, were provided with a letter containing the emergency conditions under which they

were retained. All other employees were provided with a furlough letter and other personnel guidance.

Once again, the Secretary informed employees by conference call, facsimile transmission, and over the public address system in headquarters of the shutdown. The shutdown was executed orderly. About 400 HUD employees were excepted during this period, and about 11,000 were furloughed. Consistent with our long-term plans, during the week we determined that we would need to bring back on board additional furloughed employees, if the funding lapse continued beyond a week or so.

For example, HUD provides operating subsidies and modernization funds to 3,400 local housing agencies, who in turn provide public housing and services to 1.4 million low-income households. These funds are drawn down by public housing authorities on a daily basis, as needed. Additional HUD public housing employees would have been needed to provide these funds of about \$25 million per day.

On Thursday, November 16, discussions were held on providing additional staff with OMB. By the weekend, we had a plan to increase emergency staff to meet critical needs in public business. As it happened, the crisis was over before this next step took place.

We have found that planning for contingencies is not a static process when planning for an event that is unknown. Longer shutdowns require a continuous assessment of staffing in order to gauge when the absence of providing some government function would cause an impending threat to life and property. We believe that our planning process worked the way it should have worked, within the law and the regulations, and with enough flexibility to adjust to circumstances.

Thank you for this opportunity to discuss these matters. We have provided material to your staff in response to your specific request for documentation, and I would be happy to answer your questions.

Mr. MICA. Thank you.

I now recognize Thomas Glynn, the Deputy Secretary of the Department of Labor.

Mr. GLYNN. Thank you, Mr. Chairman.

We appreciate this opportunity to appear before the committee this morning to discuss the planning and implementation of the shutdown plans at the Labor Department. I, too, am going to summarize my statement which will be submitted for the record.

I thought it might be useful to just spend a minute on the historical perspective of the Department on the question of shutdowns. The Department of Labor has developed shutdown plans regularly for more than a decade. Since 1985, only in 2 years, fiscal year 1989 and fiscal year 1995, did we have an appropriation on October 1.

Therefore, in 10 out of the 12 most recent years, we have had to prepare for the possibility of a shutdown. Some years we have had a continuing resolution on October 1, and other years we haven't. This is probably particularly related to the history of the Labor/HHS/Education appropriation and sometimes the difficulties it has had getting through both Houses.

The basis for the Department of Labor plan, as it has been revised on an almost annual basis, goes back to the guidance from

OMB in 1980, revised by Director Stockman in 1982, and the memo from Attorney General Civiletti in 1981. The Department of Labor's plan is actually published as a document entitled, "Suspension of Operations" Guidance.

This document delineates the steps necessary to complete an orderly shutdown. It requires each unit to develop a plan, and it requires each plan to have a listing of excepted employees in several categories: one, those who are in the category of protecting an imminent threat to life and property; two, those in the category who manage mandatory benefit programs; three, those whose funding is not subject to annual appropriation; and, four, the support staff necessary to perform the above three functions. In addition, each unit is responsible for developing a list of employees essential to shut down the department on a temporary basis.

In an effort to just touch on the questions which we were asked to address this morning, I would say, in terms of the process followed at the Department, we began with our published plan, as it has developed over the last 10 or 15 years, conducted an August review, received the memo from OMB in late August, and communicated to our agencies the need to develop plans by early September.

They were transmitted to OMB in late September. A number of questions were raised by OMB, and changes were made so that we had a final plan by the middle of November, which proposed 3,000 excepted employees and 470 essential employees.

On the question of the control agency guidance, I think we received approximately 10 communications from OMB, OPM, and the Justice Department between August 1 and mid-November. And I think, speaking for the Department of Labor, we found the OMB to be cooperative and responsive to our questions, without trying to micromanage every decision that needed to be made at the Department of Labor.

On the question of oversight, all the plans and modifications were reviewed by our Solicitor's Office, our Budget Office, and by OMB for the policy questions that they would raise. The information that we disseminated to our employees was similar to what you have heard from the Department of HHS and HUD. The costs to the Department of Labor we calculate at about \$7.3 million, in payroll costs, for employees who did not work during that period.

Mr. Chairman, that summarizes the Department of Labor shutdown plan and implementation. I thank you for the chance to appear, and I would be happy to answer any questions or submit any further documentation that the committee might require.

[The prepared statement of Mr. Glynn follows:]

**STATEMENT OF THOMAS P. GLYNN  
DEPUTY SECRETARY OF LABOR  
BEFORE THE  
SUBCOMMITTEE ON CIVIL SERVICE  
COMMITTEE ON GOVERNMENT REFORM AND  
OVERSIGHT  
UNITED STATES HOUSE OF REPRESENTATIVES**

**DECEMBER 6, 1995**

**Mr. Chairman and Distinguished Members of the Subcommittee:**

I appreciate this opportunity to appear before the Committee to review our experience during the recent lapse in funding for the Department of Labor (DOL).

I believe that we did an effective job planning, managing and implementing the shutdown of the Department in mid-November while holding to a minimum the negative impacts these actions could have had on America's workers and their families. We also endeavored to minimize morale problems among the 17,000 employees in the Department.

**Historical Perspective**

DOL has regularly developed plans for more than a decade to address the possibility of funding interruptions. Since 1985, FY 1989 and FY 1995 were the only two years when DOL had a full year appropriation enacted prior to the start of the fiscal year. Stated another way, DOL has not had a full-year appropriation on October 1 in 10 of the last 12 fiscal years.

OMB issued broad guidance concerning a government shutdown

in 1980 and revised it in 1982. That revision issued by OMB Director David Stockman has been the basic building block for all shutdown plans and has been changed only slightly since then as noted below. This guidance relied heavily on Attorney General Civiletti's 1981 opinion regarding the Anti-deficiency Act. This opinion identified the types of operations that may continue and those that may not.

For more than a decade, based on government-wide policy guidance such as the Stockman issuance, the Department has had in place a published procedure entitled, Continuing Resolution and Suspension of Operation Procedures. This guidance generally lays the foundation for the administrative control of funds, and specifically delineates the steps that need to be taken by Departmental staff -- usually during the summer -- to prepare for a funding interruption when it appears unlikely that funding will be enacted prior to October 1, the start of the fiscal year. The DOL policy requires that every Departmental agency develop a general contingency or shutdown plan for the suspension of operations if there is no DOL appropriation or continuing resolution enacted by October 1. The plans contain the following listings:

- o excepted employees, which includes (1) personnel required to protect against imminent threat to life and property, (2) staff who are excepted by implication, such as all excepted employees in the Office of Workers Compensation Programs who are ensuring the continuation of FECA, Longshore, and Black

Lung benefits, funds for which remain legally available despite the lapse in annual appropriations, and (3) employees where the underlying funding for their mission is not controlled by the annual appropriation process.

o employees performing the duties of closing the Department -- building engineers, certain security staff, payroll, accounting personnel, and the staff who are required to phase down certain enforcement and grant programs. The Solicitor reviewed the DOL agencies' designations of excepted activities and the resulting staffing implications.

This past August we conducted a review of previous funding interruptions and existing suspension of operations procedures and plans. We brought them up to date, and provided senior management with a detailed review of the law and previous experience. The Department worked with the central management agencies -- OMB and OPM -- to clarify existing requirements and obtain the latest information in these areas.

In your letter of invitation, you requested that I respond to a series of questions. My testimony generally addresses these questions.

I will begin with a brief chronology of the actions taken in this area by the Department prior to the suspension of operations.

**Shutdown Plan Development**

On August 29, 1995, the Assistant Secretary for Administration and Management issued a memorandum directing all DOL agencies to prepare suspension of operations plans. The starting point was the Agency plans developed in prior years when a funding lapse was anticipated. Agency plans were required to contain a detailed list of all activities which are functions the agency is authorized by law to perform without regard to the availability of an appropriation. One list was required for excepted activities. A second list delineated the functions necessary for the orderly suspension of operations. The plans were also to include lists of employees performing excepted activities and lists of employees managing an orderly shutdown. Once again, agencies were asked to review the designation of excepted activities and to consult with the Solicitor regarding any proposed modifications. The Office of the Solicitor reviewed the DOL agencies' designations of excepted activities and the resulting staffing implications. Other issues such as notification to employees on furloughs, reporting to work, procedures for employees on travel, and for contractors were typically included in these plans.

To assist agencies in preparing their shutdown plans, the Assistant Secretary for Administration and Management, Solicitor's Office, the Office of Budget, and DOL's Personnel Officer met with agency administrative officers to discuss various issues and concerns on how to proceed prior to and during

a government-wide shutdown.

During the month of September, agencies submitted their plans for operations during a shutdown. These plans were reviewed, revised, compiled and sent to OMB. OMB reviewed and offered comments to ensure consistency across agencies. Those comments were considered and, along with continued internal review, resulted in modification of the plans.

Agencies continued to revise their plans in consultation with the Solicitor and a revised plan was sent to OMB on November 17 which included approximately 3,000 employees in excepted activities and 470 employees for the orderly suspension of operations.

#### **Central Agency Guidance**

Formal guidance was received in the form of several documents:

On August 22, 1995, OMB forwarded a revised Department of Justice opinion on shutdown activities resulting from the 1990 amendment to the Antideficiency Act. The opinion further details the necessary conditions to conclude that an activity meets the legal test of excepted activities.

A November 9 directive (M-96-01) from OMB Director Alice Rivlin updated Departments on recent developments and provided guidance regarding the implementation of an orderly suspension of operations.

A Memorandum (M-96-03) was received from OMB Director Alice

Rivlin on November 14 advising that funding for the period covered by the first continuing resolution had expired and that agencies were to implement close down plans. The DOL shutdown plan was implemented, non-excepted staff were placed in furlough status, and the Department began closing its operations.

On November 16, the DOJ issued guidance concerning participation in congressional hearings during a shutdown.

A memorandum from John A. Koskinen, OMB's Deputy Director for Management dated November 16, 1995, provided guidance to political appointees and other officials and their activities during periods of shutdown.

#### **Number and Functions of Excepted Employees/Types of Excepted Activities**

The suspension of operations plan for DOL specified that the number of employees furloughed was approximately 13,900 and that roughly 3,000 employees were designated as excepted and 470 were identified to perform and manage the orderly suspension of operations and continued to work. Examples of these functions include:

- > 200 OSHA staff to conduct safety enforcement in imminent danger situations, investigation of workplace fatalities, and reports of hazardous conditions presenting a high risk of serious physical harm in the near future.
- > 1,100 MSHA staff for targeted hazard specific and complaint based inspections of mines.

- > 1,000 ESA staff for continuing Workers Compensation Programs and investigating emergencies.
- > And several hundred additional staff working to protect the assets of pension and welfare plans in imminent danger and other staff involved in certain enforcement and grant programs.

The number of employees in these categories have not varied substantially over the years.

In our initial suspension of operations plan submitted to OMB in late September, DOL had close to 4,200 personnel in excepted activities and performing functions in order to bring about an orderly suspension of operations. The final suspension of operations plans for DOL submitted to OMB on November 17, 1995 reduced the number of employees designated by approximately 750. This was due to: 1) a reduction in management and administrative staff; and 2) the Solicitor's advice concerning the definition of types of activities deemed to be excepted.

#### Shutdown Implementation Oversight

Agencies requesting certain activities be considered excepted were required to submit their proposals to the Solicitor for review. The Assistant Secretary for Administration and Management met with DOL executive staff from the agencies to review the plans from the management point of view. The Solicitor reviewed the plans for consistency with the applicable laws.

As I described earlier, OMB reviewed the DOL plans to ensure consistency with plans of other agencies and suggested revisions which were incorporated into those plans.

#### **Information Provided to Employees**

Employees were provided with continuous and extensive information concerning pay, benefits, employment outside the government, and unemployment benefits. We utilized newsletters and memoranda from the Secretary. Affected employees were sent furlough notices on November 16th. The notices explained when the furlough became effective, provided a hot-line telephone number to call for information, and provided additional information concerning unemployment compensation information, and grievance procedures.

#### **Shutdown Materials**

Copies of materials on shutdown that were provided to DOL employees will be supplied to the Committee separately.

#### **Shutdown Costs**

In terms of the costs associated with the DOL shutdown, approximately \$7.3 million was paid to DOL employees that did not work during this period. There were other less significant costs such as postage for furlough notices totaling \$8,000, and related printing, copy costs and paper, which cost an additional \$3,900.

**Assumptions About the Length of Shutdown**

The Department made no assumptions about the length of the shutdown. However, our plans recognized that one-time emergencies could occur and that we could need to recall the appropriate staff to respond to new circumstances threatening life and property. Therefore, the mix of employees could change at any point in time.

**Impact of Shutdown Length on Exempted Employees**

The Department's plans included contingencies as I have just described. Our plans did not need to be modified solely on the basis of the duration of shutdown. For example, the plans indicate that agencies would furlough most of the employees associated with bringing agency functions to an orderly suspension of operations when concluded. Thus as time progressed, the employee mix would change.

**Debt Ceiling and Shutdown**

A cash problem created by reaching the Federal borrowing limit would raise quite different questions that are best addressed by officials of the Treasury Department.

This concludes my prepared statement Mr. Chairman. I would certainly be glad to answer any questions that you or other members of the Subcommittee may have.

Mr. MICA. Thank you.

I now recognize George Muñoz, Assistant Secretary for Management and Chief Financial Officer of the Department of the Treasury.

Mr. MUÑOZ. Good morning, Mr. Chairman.

I am pleased to be here, on behalf of Secretary Rubin, to testify on the Treasury Department's plans for and implementation of the recent partial shutdown of the Federal Government between November 14 and November 19, 1995. I, too, will submit my formal presentation for the record and just want to highlight portions thereof.

From the beginning, Treasury has approached this issue in a very methodical manner. Our process was managed taking into account the interests of the American public and Treasury employees, within the legal parameters. This is not a matter that any of us looked forward to, but given that it was necessary, we made it run as smoothly as possible.

To understand the impact of the shutdown it is important to keep in mind that the Treasury Department has 11 bureaus, all of which serve an important role in the overall government's responsibilities, with functions that are broad and critical to the Nation's well-being.

One of the concerns that we identified in planning for the shutdown was the unfortunate misuse of the terms "essential" and "nonessential." We very much agree with the statements earlier made by Representative Morella on this matter. This terminology was not used in any of our shutdown plans. I know that I speak on behalf of the Secretary when I say that these are inappropriate terms that mistakenly convey a sense of relative importance among Federal employees. They perpetuate the false impression that some Federal workers perform jobs that are trivial or unnecessary.

Every day Federal workers provide valuable service for the American taxpayer. Instead, our determinations of the work that can and cannot continue in the absence of appropriations are based on the Antideficiency Act's requirements and not on the basis of some abstract judgment of workers' value.

In August, we put together a review team that examined all of the plans from our bureaus to ensure that those plans were consistent with the applicable legal principles that were well thought out and clearly communicated. The Treasury Department performed well only because in this review team we had representatives starting at the top with Secretary Rubin, myself, members of our CFO Organization, members of the General Counsel under Ed Knight, our Personnel Office, and our general managers.

It was due to this review team that we were able to review our bureaus' plans and give guidance to them so that their plans would be complete and well communicated to all employees. Once the shutdown was ordered by OMB, we used the network of bureau shutdown coordinators which we had established and the bureau heads to instruct them to begin implementation of their shutdown plans. The bureaus and the department began issuing furlough notices and ordered nonexcepted employees to begin to shut down of their operations and go home once that process was completed.

We established a hotline, which was in effect on the day of the shutdown, with the purpose of informing all Treasury employees of the status of the shutdown. This hotline proved effective and permitted questions to be answered. During the shutdown, our departmental review team continued to meet to evaluate exception requests that became necessary as circumstances changed.

Through conference calls initiated twice daily between the department review team and the shutdown coordinators in the bureaus, we provided continuous communication to the bureaus on the status of appropriations action, as well as answering operational questions. We also used this team to ensure that departmental operations were back to normal as soon as possible after the Treasury Department shutdown was ended.

In general, the system that was put in place worked extremely well and facilitated rapid and coordinated communications with Treasury's 154,000 employees, easing, to the extent possible, the negative effects on morale, and minimizing the negative impacts of the shutdown on productivity.

Mr. Chairman, you have provided the Secretary with a list of questions to be answered, and the Department's written answers to these questions address in more detail our management of the process. We will be providing these answers for the record; we hope that you will find them complete. Please have your staff get back to us if there are any further extensions on those answers.

This concludes my oral remarks.

[The prepared statement of Mr. Muñoz follows:]

NOT TO BE RELEASED BEFORE  
9:00 AM ON DECEMBER 6, 1995

STATEMENT OF  
GEORGE MUÑOZ  
ASSISTANT SECRETARY FOR MANAGEMENT AND CFO  
DEPARTMENT OF THE TREASURY

BEFORE THE  
HOUSE CIVIL SERVICE SUBCOMMITTEE

DECEMBER 6, 1995

MR. CHAIRMAN, I AM PLEASED TO BE HERE ON BEHALF OF THE SECRETARY TO TESTIFY ON THE TREASURY DEPARTMENT'S PLANS FOR AND IMPLEMENTATION OF THE RECENT PARTIAL SHUTDOWN OF THE FEDERAL GOVERNMENT BETWEEN NOVEMBER 14 AND NOVEMBER 19, 1995. FROM THE BEGINNING, TREASURY HAS APPROACHED THIS ISSUE IN A VERY METHODICAL MANNER. OUR PROCESS WAS MANAGED TAKING INTO ACCOUNT THE INTEREST OF THE AMERICAN PUBLIC AND TREASURY EMPLOYEES WITHIN THE LEGAL CONFINES. THIS IS NOT A MATTER THAT ANY OF US LOOKED FORWARD TO, BUT, GIVEN ITS NECESSITY, IT RAN AS SMOOTHLY AS POSSIBLE.

TO BEST UNDERSTAND THE IMPACT OF THE SHUTDOWN, IT'S IMPORTANT TO UNDERSTAND THAT THE TREASURY DEPARTMENT SERVES AN IMPORTANT ROLE IN THE OVERALL GOVERNMENT'S RESPONSIBILITIES, WITH FUNCTIONS THAT ARE BROAD AND CRITICAL TO THE NATION'S WELL-BEING. THESE FUNCTIONS INCLUDE SUCH IMPORTANT ONES AS:

- COLLECTING THE PROPER AMOUNT OF TAXES;
- DISBURSING PAYMENTS TO OVER 100 MILLION CITIZENS ANNUALLY;
- ENFORCING LAWS RELATED TO TARIFF AND TRADE, SMUGGLING OF DRUGS AND CONTRABAND;
- PROTECTION OF THE PRESIDENT, VICE PRESIDENT AND OTHERS;

- \* MANUFACTURING OF CURRENCY AND COINS; AND
- \* REGULATION OF BANKS AND THRIFT INSTITUTIONS.

ONE OF THE CONCERNS THAT WE IDENTIFIED IN PLANNING FOR THE SHUTDOWN WAS THE UNFORTUNATE MISUSE OF THE TERMS "ESSENTIAL" AND "NON-ESSENTIAL." THIS TERMINOLOGY WAS NOT USED IN ANY OF OUR SHUTDOWN PLANS. I KNOW THAT I SPEAK ON BEHALF OF THE SECRETARY WHEN I SAY THAT THESE ARE INAPPROPRIATE TERMS THAT MISTAKENLY CONVEY A SENSE OF RELATIVE IMPORTANCE AMONG FEDERAL EMPLOYEES. THEY PERPETUATE THE FALSE IMPRESSION THAT SOME FEDERAL WORKERS PERFORM JOBS THAT ARE TRIVIAL OR UNNECESSARY. EVERY DAY, FEDERAL WORKERS PROVIDE VALUABLE SERVICE FOR THE AMERICAN TAXPAYER. INSTEAD, OUR DETERMINATIONS OF THE WORK THAT CAN AND CANNOT CONTINUE IN THE ABSENCE OF APPROPRIATIONS ARE BASED ON THE ANTI-DEFICIENCY ACT'S REQUIREMENTS, AND NOT ON THE BASIS OF SOME ABSTRACT JUDGEMENT OF WORKERS' "VALUE." SOME OF THE MOST IMPORTANT WORK OF THE DEPARTMENT WAS CONSIDERED "NON-EXCEPTED" BECAUSE A DELAY IN ITS PERFORMANCE WOULD NOT IMMEDIATELY JEOPARDIZE LIFE AND PROPERTY.

OUR PLANNING PROCESS STARTED BACK IN JUNE 1995, WHEN IT BECAME APPARENT THAT WE SHOULD BEGIN PLANNING FOR A POSSIBLE LAPSE IN APPROPRIATIONS AFTER OCTOBER 1. OUR PREVIOUS GUIDANCE WAS ISSUED IN 1991. INITIALLY, WE MODIFIED AND EXPANDED THIS EARLIER GUIDANCE TO PROVIDE AS MUCH INFORMATION AS POSSIBLE TO OUR BUREAUS IN ORDER FOR THEM TO DEVELOP THEIR OWN PLANS. I ISSUED THAT GUIDANCE TO ALL TREASURY BUREAUS ON JULY 17, 1995, REQUESTING THAT THE BUREAUS SUBMIT THEIR UPDATED SHUTDOWN PLANS TO THE DEPARTMENT IN AUGUST FOR REVIEW.

IN AUGUST, WE PUT TOGETHER A REVIEW COMMITTEE TO EXAMINE ALL BUREAU PLANS AND TO ENSURE THAT THOSE PLANS WERE CONSISTENT WITH APPLICABLE LEGAL PRINCIPLES, WELL THOUGHT OUT, AND CLEARLY COMMUNICATED. IN ADDITION, JUSTIFICATIONS FOR "EXCEPTED" POSITIONS AND FUNCTIONS WERE REVIEWED FOR CONSISTENCY WITH THE ATTORNEY GENERAL'S (AG) 1981 OPINION, AS UPDATED BY THE 1995 OPINION. BUREAU PLANS ALSO WERE REQUIRED TO ADDRESS THE DIFFERING IMPACTS OF SHORT-TERM AND LONG-TERM SHUTDOWNS, AND PROVIDE FOR PHASING OVER THE COURSE OF THE SHUTDOWN.

THE REVIEW COMMITTEE CONDUCTED ITS REVIEW IN AUGUST AND EARLY SEPTEMBER, NOTIFYING ME OF ITS FINDINGS. BASED ON THESE REVIEWS, WE BRIEFED THE SECRETARY AND OTHER TREASURY OFFICIALS ON THE TOTAL IMPLEMENTATION PLAN FOR THE DEPARTMENT. MEMORANDA WERE TRANSMITTED TO BUREAUS REQUESTING MODIFICATIONS, AS NECESSARY, AND/OR NOTIFYING THEM OF ACCEPTANCE OF THEIR SHUTDOWN PLANS.

THE RESULTS OF THIS REVIEW WERE A PROCESS THAT FURLOUGHED APPROXIMATELY THREE OF EVERY FOUR TREASURY DEPARTMENT EMPLOYEES DURING THE NOVEMBER 4 TO 19 TIME FRAME. MANY OF THE REMAINING EMPLOYEES WERE COVERED BY OTHER FUNDING AUTHORITIES, SUCH AS REVOLVING FUNDS, AND ARE NOT SUBJECT TO THE ANNUAL APPROPRIATIONS PROCESS.

ONCE THE SHUTDOWN WAS ORDERED BY OMB, WE USED THE NETWORK OF BUREAU SHUTDOWN COORDINATORS AND BUREAU HEADS TO INSTRUCT THEM TO BEGIN IMPLEMENTATION OF THEIR SHUTDOWN PLANS. THE BUREAUS AND THE DEPARTMENT BEGAN ISSUING FURLOUGH NOTICES AND ORDERED "NON-EXCEPTED" EMPLOYEES TO BEGIN TO SHUTDOWN THEIR OPERATIONS

AND GO HOME ONCE THAT PROCESS WAS COMPLETED. THE SECRETARY PERSONALLY SPOKE AT A TOWN MEETING OF TREASURY EMPLOYEES THE DAY BEFORE THE SHUTDOWN TO ADDRESS EMPLOYEE CONCERNS AND QUESTIONS.

A HOTLINE WAS PUT INTO EFFECT ON THE DAY OF THE SHUTDOWN WITH THE PURPOSE OF INFORMING ALL TREASURY EMPLOYEES OF THE STATUS OF THE SHUTDOWN. THIS HOTLINE PROVED EFFECTIVE AND PERMITTED QUESTIONS TO BE ADDRESSED. DURING THE SHUTDOWN, OUR DEPARTMENTAL REVIEW TEAM CONTINUED TO MEET TO EVALUATE EXCEPTION REQUESTS THAT BECAME NECESSARY AS CIRCUMSTANCES CHANGED. THROUGH CONFERENCE CALLS INITIATED TWICE DAILY BETWEEN THE DEPARTMENTAL REVIEW TEAM AND THE SHUTDOWN COORDINATORS IN THE BUREAUS, WE PROVIDED CONTINUOUS COMMUNICATIONS TO THE BUREAUS ON THE STATUS OF APPROPRIATIONS ACTION, AS WELL AS ANSWERING OPERATIONAL QUESTIONS. WE ALSO USED THIS TEAM TO ENSURE THAT DEPARTMENTAL OPERATIONS WERE BACK TO NORMAL LEVELS AS SOON AS POSSIBLE AFTER THE TREASURY DEPARTMENT'S SHUTDOWN WAS ENDED. THE SECRETARY PERSONALLY HELD A SECOND TOWN HALL MEETING WITH TREASURY EMPLOYEES TO WELCOME THEM BACK AND TO SMOOTH THE TRANSITION BACK TO WORK.

IN GENERAL, THE SYSTEM THAT WAS PUT IN PLACE WORKED EXTREMELY WELL AND FACILITATED RAPID AND COORDINATED COMMUNICATIONS WITH TREASURY'S 154,000 EMPLOYEES -- EASING, TO THE EXTENT POSSIBLE, THE NEGATIVE EFFECT ON MORALE AND MINIMIZING THE NEGATIVE IMPACTS OF THE SHUTDOWN ON PRODUCTIVITY.

MR. CHAIRMAN, YOU HAVE PROVIDED THE SECRETARY WITH A LIST OF QUESTIONS TO BE ANSWERED, AND THE DEPARTMENT'S WRITTEN ANSWERS TO THESE QUESTIONS ADDRESS IN MORE DETAIL OUR MANAGEMENT OF THIS PROCESS. WE WILL BE PROVIDING THESE ANSWERS FOR THE RECORD. WE HOPE THAT YOU WILL FIND THEM COMPLETE. PLEASE HAVE YOUR STAFF GET BACK TO ME IF YOU NEED ADDITIONAL INFORMATION.

THIS CONCLUDES MY REMARKS. I AM AVAILABLE TO ANSWER ANY QUESTIONS YOU MAY HAVE.

**"The Government Shutdown"**  
Hearing before the House Civil Service Subcommittee  
December 6, 1995  
9:00 A.M., Room 2154  
Rayburn House Office Building

1. **Please describe your agency's process for developing and implementing its shutdown plans.**

**Answer:** The Department began reviewing its existing "Shutdown" guidance in June of 1995, based on news media accounts that a budget impasse was looming on October 1. The Department's previous shutdown guidance had been issued in 1991. This earlier version was modified and, where applicable, expanded to provide the Treasury bureaus with as much information as possible to aid in the development and/or revision of their shutdown plans. The Assistant Secretary for Management and CFO issued guidance to Treasury Bureaus on July 17, 1995, requesting that bureaus update their plans and submit them to the Department in early August for review.

The Assistant Secretary for Management and CFO formed a Review Team to review bureau shutdown plans as they were received, and to ensure that all the plans were consistent with applicable legal principles, well thought out and clearly communicated. Justifications for positions and functions "excepted" from a shutdown, should a lapse in appropriations occur, were reviewed for consistency with the Attorney General's (AG) 1981 and 1995 opinions. It also was important for the bureaus' plans to address the differing impact of short-term and long-term shutdowns and phasing for shutdowns of different lengths of time. All bureau plans were required to have the following key plan elements:

- ▶ **Preparation:** identifies excepted and non-excepted functions;
- ▶ **Implementation:** actions to be taken to notify bureau employees of their status in the event of a shutdown and actions to ensure an orderly shutdown of operations; and
- ▶ **Reactivation:** actions to restart operations and notify employees to return to work after funding is provided by Congress and approved by the President.

The Department held meetings on August 7, August 23 and August 30 that brought together Departmental and bureau representatives to discuss shutdown planning, including personnel-related matters. Bureau representatives (Shutdown Coordinators) were provided with the latest guidance issued by the Department and OPM.

The Review Team and a subordinate review group, called the "Working Group," analyzed the bureau plans as they were received in August and September. The Review Group notified the Assistant Secretary for Management and CFO of their findings. Memoranda were transmitted to the bureaus requesting modifications, as necessary, and/or notifying them of acceptance of their plans.

A "Hot-line" was established in September to provide current information concerning FY 1996 appropriations and the possible shutdown of Treasury operations. In addition, separate bureau "Hot-lines" were established to address employees' bureau-specific questions.

The Treasury Department submitted preliminary bureau plans to OMB in early September. The bureau plans were reviewed continually and modified, as necessary, during this time in order to be consistent with the AG opinions regarding shutdown of agency operations and other Departmental concerns.

Once the shutdown was ordered by OMB, the Department notified the respective bureau "Shutdown Coordinators" and Bureau Heads to begin the implementation phase of their plans. The bureaus began issuing furlough notices and ordered the "non-excepted" employees to begin to shutdown their operations and go home once that was completed. "Non-excepted" employees were also instructed to listen to news broadcasts in order to learn when to return to work.

2. Please explain to the Subcommittee what guidance your agency received with respect to its shutdown from the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), and/or other federal agencies.

Answer: OMB and OPM provided the following:

OMB Guidance:

- ▶ August 16, 1995. The Department of Justice responded to a request from Alice Rivlin (Director, Office of Management and Budget) for advice regarding the permissible scope of government operations during a lapse in appropriations. On August 22, 1995, OMB requested that agencies: review their contingency plans in light of this opinion; make any changes necessary to conform to the opinion; and otherwise ensure that the plans were current. OMB requested copies of the updated plans for review.
- ▶ September 25, 1995. OMB notified agencies that they had completed their review of our shutdown plans. OMB indicated that they would issue further guidance about whether and when a shutdown would be required.
- ▶ November 9, 1995. OMB provided guidance designed to help agencies to plan for shutdown activities prior to the November 14, 1995 shutdown.
- ▶ November 13, 1995. OMB provided further guidance on a possible shutdown -- requesting all employees to report for work on November 14 and wait for further word from OMB.
- ▶ November 14, 1995. OMB informed agencies to implement the close-down of affected operations promptly and in an orderly manner.
- ▶ November 16, 1995. OMB provided guidance on the activities of political

appointees during periods of shutdown and examples of the impact of reduced government services.

**OPM Guidance:**

- ▶ August 1, 1995. OPM provided updated guidance on furloughs including questions and answers on various personnel management aspects of furloughs.
- ▶ September 6, 1995. OPM provided supplemental questions and answers concerning furloughs.
- ▶ November 13 - 19, 1995. OPM provided information to furlough points of contact on a variety of issues, such as filing for unemployment, processing SF 50s, etc.
- ▶ November 21, 1995. OPM provided guidance on pay and leave treatment for employees affected by the shutdown.

3. Please inform the Subcommittee of any guidance that you provided to the Office of Management and Budget and/or other federal agencies with regard to the management of agency finances, including appropriated and non-appropriated funds from all sources, that could affect the ability of agencies to operate under a lapse of appropriations.

**Answer:** No guidance was provided to OMB or other agencies regarding management of finances during a shutdown.

However, the Financial Management Service's (FMS) Assistant Commissioner areas notified their respective customers in writing of their intention to maintain an "Excepted" or "Non-Excepted" status during the shutdown. The Regional Finance Centers, which were open for business during the shutdown, sent out the following notification to their customers:

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**CUSTOMER NOTIFICATION**

In the event of a lapse of appropriations, the Financial Management Service Regional Financial Centers will be in operation.

Agencies are responsible for ensuring funds availability for any funds they certify.

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FMS also provides services other than disbursement of funds for other federal agencies. Customers for those services were informed that the services would continue to be provided to those agencies that had approved funding. As a final attempt to ensure that all customers had been notified, an announcement was also placed on the FMS Net.

4. Please inform the Subcommittee of the number of employees your agency furloughed and the number who continued working beyond the lapse of appropriations. Please describe the functions they perform, and explain your rationale for continuing those functions. Did you alter your determinations at any time after the shutdown began? If so, why?

**Answer:** Shutdown of operations beginning November 14, 1995:

Estimated On-Board Nov. 14, 1995	Employees Furloughed on Nov. 14th	Employees Remaining on duty during the shutdown
154,000	113,400	40,600

Activities continuing after shutdown:

- ▶ Secret Service protection and law enforcement functions;
- ▶ Mint circulating and numismatic coin production;
- ▶ Customs Service: cargo inspections; commercial vehicle and passenger processing; law enforcement operations; air and marine interdiction; Law Enforcement Communications and data systems; and revenue collections;
- ▶ ATF: agents involved in criminal enforcement; collection of occupational and excise taxes; and laboratories supporting the National Response teams;
- ▶ FMS: operations to continue payments of government obligations and claims; and its government-wide accounting function;
- ▶ IRS: processing of tax returns which included remittances and hardship cases; functions supporting the Social Security Administration; computer operations necessary to prevent loss of data in process and revenue collections; complete and test Tax Year 1995 Filing Season computer program; processing of cases with expiring statutes of limitation, bankruptcy, liens, and seizure cases; criminal investigation with undercover operations; and 1995 tax forms design and printing; and
- ▶ minimal executive direction and duties necessary for an orderly shutdown of operations.

The Department issued guidance, which was consistent with OMB and Attorney General (AG) guidelines, intended to assist bureaus in updating their plans because the Anti-Deficiency Act, 31 U.S.C. 1341 & 1342, severely restricts the conduct of business by agencies during a lapse of appropriations (e.g., making or authorizing expenditures or obligations in excess of appropriations). The principal guidance regarding the types of functions that may be continued during a lapse of appropriations is the AG's opinion dated January 16, 1981, as updated by an August 16, 1995 AG opinion. The functions of the Treasury Department that continued after the shutdown were consistent with the AG opinion. That opinion said that the following activities can continue during a shutdown of operations:

- ▶ those activities that have a continuing source of funding;
- ▶ those activities that are authorized by law to continue even without funding;
- ▶ those activities that are authorized by necessary implication of, e.g., the need to support, activities that continue under another authority, such as the FMS's disbursement of benefit payments for the Social Security program, which has continuing funding;
- ▶ those activities covered by limited authority to employ (although not pay for) personal services for activities to the extent necessary to avoid imminent "emergencies involving the safety of human life or the protection of property;"
- ▶ those activities that are necessary to discharge of the President's constitutional duties; and
- ▶ functions necessary for a short period in order to ensure an orderly shutdown of operations.

The bureaus, with Departmental encouragement, continually fine-tuned their plans before the shutdown, consistent with the AG exceptions identified above. After the shutdown occurred, some minor adjustments were made, primarily for Departmental Offices (DO), that were also consistent with the AG opinion. In all cases, these adjustments were authorized only after Departmental Review Group approval as to consistency with the AG's guidelines.

**5. What steps have you taken to ensure that your agency adhered to all applicable standards and guidelines in implementing the shutdown? What steps has OMB taken to oversee your agency's implementation of the shutdown?**

**Answer:** OMB provided guidance as specified above (question #2) and made recommendations related to our shutdown plans. The Department of the Treasury was responsible for ensuring that the bureau plans adhered to guidance.

- ▶ The Department issued guidance, in conjunction with OMB and Attorney General (AG) guidelines, intended to assist bureaus in updating their plans.
- ▶ Where applicable, all bureaus had contingency plans in place and identified "points of contact." The Assistant Secretary for Management and CFO issued guidance to Treasury bureaus on July 17, 1995, requesting that their plans be updated and submitted to the Department for review.
- ▶ Comprehensive Q&As were developed and passed out to all bureau points of contact.
- ▶ A "Hot Line" was established (1-800-566-6437 and locally 202-622-9191).
- ▶ The Assistant Secretary for Management and CFO formed a Review Team to review bureau plans to ensure that all the plans were consistent with applicable legal principles,

well thought out and clearly communicated. All bureau plans were required to have the following key plan elements:

- Preparation: identification of excepted and non-excepted functions;
  - Implementation: actions to be taken to ensure an orderly shutdown of operations; and
  - Reactivation: actions to restart operations after funding is provided.
- ▶ The principal guidance regarding the types of functions that may be continued during a lapse of appropriations is the Attorney General's opinion dated January 16, 1981, as updated by an AG opinion dated August 16, 1995. Treasury's "excepted" activities were justified based on one or more of the following basis:
    1. continuing source of funding, such as assessments collected by OTS, OCC;
    2. authorized by law to continue even without funding;
    3. authorized by necessary implication of, e.g., the need to support, activities that continue under another authority, such as the FMS's disbursement of benefit payments for the Social Security program, which has continuing funding;
    4. limited authority to employ personal services for activities to the extent necessary to avoid imminent "emergencies involving the safety of human life or the protection of property;"
    5. necessary in order to discharge the President's constitutional duties;
    6. necessary for a short period in order to ensure an orderly shutdown of operations.
  - ▶ "Excepted" activities were based on actual workload requirements. Plans recognized that as time passed, performance of activities that were "excepted" initially might no longer be required. Plans similarly recognized that activities initially shut down could become "excepted" because of changed circumstances. In either case, only staff necessary to perform activities that were at the time "excepted" were to report to duty.
  - ▶ The Department required thorough documentation on all "excepted" functions.
  - ▶ Customers/vendors were made aware of the potential lapse, how it could affect Treasury business operations and the steps the bureaus would take to ameliorate effects on customers and vendors;
  - ▶ Shutdown planning is a dynamic process. Plans might have to be revised as events unfold, especially as more details on a potential shutdown and its duration are revealed. Bureaus were required to get approval from the Department for a change in their plans.

6. **What, if any, guidance did your agency provide to subordinate agencies or furloughed employees with respect to such personnel issues as pay, continuation of benefits, and unemployment compensation? How was it provided? Have you received guidance from OPM on such issues? Please provide copies of all guidance or policy directives your agency issues with respect to the shutdown?**

**Answer:** In addition to the initial Departmental guidance for developing bureau shutdown plans that was issued on July 17, the Department provided the bureaus with the 1995 AG opinion and OPM's updated Questions and Answers concerning personnel-related matters in the event of a shutdown. This guidance was provided in hardcopy format.

The Department's August 23 and August 30 meetings were with the bureau personnel and labor relations offices. Those meetings discussed shutdown issues that included pay, benefits, unemployment compensation and other personnel issues.

In addition, the Department responded orally on many occasions, as a result of bureau questions or "Hot-line" phone calls. During the actual shutdown, twice-daily conference calls were held with the bureau Shutdown Coordinators, the Assistant Secretary for Management and CFO, and the Review Group. Everyone was provided with current information relating to the shutdown of operations, including personnel related issues.

7. **Please provide the Subcommittee with copies of correspondence, memoranda, guidance, directives, instructions, news releases or comparable correspondence intended to convey to employees information about administration or agency policies related to the shutdown. Please provide copies of any comparable documents communicated to your agency's customers, whether individuals or organizations.**

**Answer:** The Department has collected and organized all shutdown related items. We are providing the Subcommittee with this information.

8. **Please provide a description of your agency's functions and activities that were continued during this interruption of routine operations. Please indicate any special funding mechanisms (e.g., carry forward, trust funds, fee accounts, reimbursable agreements) used to support these continuing activities.**

**Answer:** Treasury Department activities continuing after the shutdown were consistent with the AG opinion on activities that can continue during a shutdown of operations:

- ▶ Secret Service protection and law enforcement functions;
- ▶ Mint circulating and numismatic coin production;
- ▶ Customs Service: cargo inspections; commercial vehicle and passenger processing; law enforcement operations; air and marine interdiction; Law Enforcement Communications and data systems; and revenue collections;
- ▶ ATF: agents involved in criminal enforcement; collection of occupational and excise

- taxes; and laboratories supporting the National Response teams;
- ▶ FMS: operations to continue payments of government obligations and claims; and its government-wide accounting function;
- ▶ IRS: processing of tax returns which include remittances and hardship cases; functions supporting the Social Security Administration; computer operations necessary to prevent loss of data in process and revenue collections; complete and test Tax Year 1995 Filing Season computer program; processing of cases with expiring statutes of limitation, bankruptcy, liens, and seizure cases; criminal investigation with undercover operations; and 1995 tax forms design and printing; and
- ▶ minimal executive direction and duties necessary for an orderly shutdown of operations.

Several bureaus had exemptions from shutdown that were authorized by funding sources other than annual appropriations:

- ▶ OCC and OTS operate with fee assessments;
- ▶ BEP operates with reimbursements primarily from the Federal Reserve and the Postal Service;
- ▶ Mint numismatic operations operate in a revolving fund;
- ▶ Treasury Forfeiture Fund had carry-over funds;
- ▶ FLETC had supplemental FY 1995 funding remaining available in FY 1996 that was used to continue training operations, as demand warranted; and
- ▶ BPD was able to exercise authority contained in 31 U.S.C. 3129, which creates an indefinite appropriation based on a percentage of debt issued to continue operations.

9. Please estimate the total costs to your agency associated with the interruption of operations between November 14 and November 20, 1995. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of this interruption of operations. Please provide, too, an estimate of any savings associated with this interruption of activities.

**Answer:**

**SUMMARY COST OF SHUTDOWN**

The following sample information identifies the estimated costs as a result of partially shutting down some of Treasury's operations. The cost impact is still being evaluated.

**LOST REVENUE** -- Preliminary estimate \$400 million.

- ▶ We are still evaluating the estimate and methodology for the potential loss in revenues during the four day furlough period.

**COSTS OF DEVELOPING CONTINGENCY SHUTDOWN PLANS AND  
DESIGNATING AND NOTIFYING EMPLOYEES -- Estimated at \$404,000.**

(Includes the extraordinary costs associated with planning for and implementing the shutdown, such as: shutdown-related planning meetings and briefings; costs of shutdown plan development; review and approval; providing information and guidance to employees related to shutdown; and any operational costs which would not have occurred but for shutdown).

**Estimated Costs:**

- ▶ **Printing -- \$18,100**
  - Furlough Notices (Approximately 114,000 notices had to be printed or copied. 114,000 @ 5¢ = \$5,700).
  - Unemployment Forms (Approximately 114,000 @ 5¢ = \$5,700).
  - Recall Letters (Approximately 114,000 @ 5¢ = \$5,700).
  - Other (guidance, Q&As, etc.) = \$1,000
- ▶ **Postage -- \$3,648**
  - Furlough Notices (Approximately 114,000 notices of which 5% were mailed. 5,700 @ 32¢ = \$1,824).
  - Unemployment Forms (N/A).
  - Recall Letters (Approximately 5,700 @ 32¢ = \$1,824).
- ▶ **Staff Time -- \$375,000**
  - Approximately 130 employees (conservative estimate) spent a full 10 staff days related to shutdown planning and implementation. (Estimate average salary and benefits of \$75,000/260 = \$288 (daily rate) x 10 days = \$2,884 x 130 employees = \$375,000).
- ▶ **Treasury "Hot-line" -- \$7,000**

**LOSS OF DISCOUNTS/PAYMENT PENALTIES -- TBD**

**CONTRACTUAL DELAYS**

- ▶ Vendor and employee payments were delayed. This resulted in customer demands for payments, and strained our relationship with customer/vendors.
  - Vendors submitting bills for services provided **were not compensated promptly.** Early indications are that there may be some penalties resulting from the delayed processing of payments.

## **EMPLOYEE ISSUES**

- ▶ Employee morale may affect Treasury's support to CFC. Treasury has historically been a major supporter of charitable organizations through the Government's Combined Federal Campaign.
- ▶ The shutdown will result in significant loss of productivity through: disruption in the flow of work; downtime due to planning, notification, and execution of the shutdown plan; low morale which in turn may result in increased attrition, more employee litigation; and possible recruitment and retention losses.
- ▶ The shutdown further exacerbated morale problems created by budget uncertainties.

## **CUSTOMERS NOT RECEIVING SERVICES OR A DELAY IN SERVICES**

- ▶ Phones unanswered -- IRS staff was not available to resolve tax issues.
  - Taxpayers who needed answers to key tax questions to pay their taxes found phones unanswered.
  - Requests for tax forms and accounts assistance had to be deferred until after the shutdown, increasing taxpayer frustration.

## **SALARY AND BENEFITS FOR THOSE EMPLOYEES FURLOUGHED FOR SCHEDULED WORK HOURS AND NOT WORKED.**

- ▶ We currently estimate approximately \$80 million for salaries and benefits of furloughed employees. This again is under evaluation, and will be revised later.

## **PROGRAMMATIC EFFECTS**

- ▶ Slippage in initiating, conducting and/or finalizing audits, investigations and program quality reviews critical to the effective management of Treasury programs and to the prevention of fraud, waste and abuse within the Department.
- ▶ Loss of public confidence in our agency.
- ▶ Undermining of fair and equal treatment of all taxpayers
  - The impact of the furloughs in the enforcement programs -- **processing tax remittances is considered an "excepted" activity** -- is unfair to the vast majority of taxpayers who fully comply with the tax laws.

- ▶ Major delays in processing throughout Treasury.
  - Processing of applications (such as, permits, labels, licenses) for alcohol, tobacco, firearms, explosives, customs brokers, and vendor petitions.
  - IRS did not process tax returns that did not include payments of taxes owed.
  - IRS did not pursue investigative activities unless they were active, multi-agency, grand jury investigations or preparation for actual trial proceedings -- this could seriously weaken the Government's case and result in further losses in revenues.
- ▶ TBD (Bureau reports on other impacts).

**10. No previous shutdown lasted more than 3 days. Did your agency make any assumptions about the length of the shutdown? If so, what was the time frame assumed, and how did it affect the agency's decisions with respect to the functions and positions it has continued after the lapse of appropriations?**

**Answer:** Even though news media reports were pessimistic about the length of a government shutdown, the Department's July 17 guidance assumed no particular length of time for a shutdown. The Department prepared for the full range of possible shutdown periods. As the plans were being reviewed and fine tuned in August and September, it became evident that some bureau operations/functions could be successfully shutdown for a few days without serious impact. However, if a shutdown progressed for over a week or 10 days, some operations would need to be reactivated, and some employees would have to be recalled to work.

The bureaus were notified that the shutdown plans were flexible documents, and that fine tuning their plans to fit the particular circumstances and length of the shutdown was normal. The Department emphasized the importance of phased plans that addressed both short-term and long-term shutdowns. Some bureaus, particularly IRS, did revise their plans to consider operations if a shutdown lasted longer than a week.

For example, IRS indicated that a long-term shutdown, if it began on October 1 and continued through November, would be detrimental to the 1995 Tax Filing Season. Employees in critical functions necessary to design and develop tax forms would have to be recalled in mid-November in order to meet publication and distribution deadlines for the upcoming Tax Filing Season.

Other bureaus indicated that it might be necessary to recall employees that maintained and protected government property or performed some law enforcement functions if there was a long shutdown of operations.

11. How would your determination with respect to what functions or positions to continue change if the interruption were to last:
- a. 10 days?
  - b. 30 days?
  - c. 90 days?

**Answer:** "Excepted" activities were to be based on actual workload requirements. As time passed, performance of some activities that were "excepted" initially were no longer required. Similarly, planned activities that initially were "non-excepted" could become "excepted" because of changed circumstances. In either case, only staff necessary to perform activities that currently were "excepted" were allowed to report to duty. Each bureau monitored its requirements and made changes as necessary to bring employees back to work. Justifications for those changes were to be sent to the Department for review and approval.

12. Please provide the Subcommittee with a description of the differences in your agency plans, if any, that would ensue if the interruption of operations resulted from restrictions resulting from the debt ceiling rather than a lapse in appropriations.

**Answer:** If an agency has funding under an appropriation/CR, but Treasury doesn't have cash due to the debt ceiling, all employees come to work. In that situation, we can incur obligations for salaries, we just can't pay them.

13. Identify all of your revolving funds.

a) How many full time and part time employees work at each one? b) How much money is involved in the revolving funds? c) How many employees were furloughed?

**Answer:** The Department of the Treasury has many revolving, special fund and general fund (with user fees) accounts. See Attachment 1 for details related to funding and employees.

14. Identify all of the fee accounts, at least the ten largest.

a) How many full time and part time employees work at each one?  
 b) How much money is involved in the fee funds?  
 c) How many employees were furloughed?

**Answer:** See Attachment 1.

15. Identify the total number of public affairs employees and how many were furloughed.

a) How many public affairs employees were furloughed from the Bureau of Alcohol and Firearms?

**Answer:** Approximately 86 percent of all of the Treasury Department's public affairs staffing was furloughed. There are seven ATF public affairs positions, of which six were furloughed. See the chart on the next page.

PUBLIC AFFAIRS STAFFING During Furlough Period Fiscal Year 1996		
Bureau/Organization Name	NUMBER OF EMPLOYEES	
	Total	Furloughed
Departmental Offices.....	15	11
Treasury Forfeiture Fund.....	0	0
Office of Inspector General.....	0	0
Federal Law Enforcement Training Center.....	3	0
Financial Management Service.....	3	1
Alcohol, Tobacco & Firearms.....	7	6
U.S. Customs Service.....	19	19
Financial Crimes Enforcement Network.....	7	4
United States Mint.....	3	2
Bureau of the Public Debt.....	3	0
Bureau of Engraving and Printing.....	12	0
Internal Revenue Service.....	300	298
U.S. Secret Service.....	14	0
Comptroller of the Currency.....	6	0
Office of Thrift Supervision.....	6	0
<b>TOTAL, PUBLIC AFFAIRS.....</b>	<b>398</b>	<b>341</b>

Numbers are approximate. Treasury bureaus/organizations do not necessarily have separate Public Affairs offices. The Public Affairs function is often combined with Legislative/Congressional/Media and correspondence functions.

16. Do you have any special appropriations associated with any of your programs?

**Answer.** Yes. The Bureau of the Public Debt has an indefinite appropriation ( 31 U.S.C. section 3129) that enables the Bureau to continue to perform its borrowing responsibilities when there is a lapse in appropriations.

## DEPARTMENT OF THE TREASURY

Treasury Revolving, User Fee, Special Fund Accounts

ACCOUNT	CODE	Est. Amount \$ 000 FY 98	EMPLOYMENT STATUS			
			Number of Employees On-board		Number of Furloughed Employees	
			Full-Time	Part-Time	Full-Time	Part-Time
<b>Special Funds</b>						
Treasury Forfeiture Fund	8687	\$225,000	19	0	0	0
Presidential Election Campaign Fund	8081	70,000	0	0	0	0
Internal Revenue Collections from Puerto Rico	8737	232,447	0	0	0	0
Border Services User Fee	8274	100,000	0	0	0	0
Customs Services at Small Airports	8684	1,406	30	0	0	0
Coinage Profit Fund	4811	0	0	0	0	0
Reimb. to State & Local Law Enf. Agencies	5089	0	0	0	0	0
TOTAL, Special Funds.....		\$428,453	49	0	0	0
<b>Public Enterprise Revolving Funds</b>						
Office of Thrift Supervision	4108	150,800	1,476	5	0	0
PEF, Federal Tax Lien Revolving Fund	4413	3,036	0	0	0	0
Exchange Stabilization Fund	4444	2,640,000	0	0	0	0
TOTAL, Public Ent. Revolving Funds..		\$2,793,836	1,476	5	0	0
<b>Intergovernmental Revolving Funds</b>						
Working Capital Fund	4501	172,060	233	0	215	0
Fed. Financing Bank	4521	8,574,259	0	0	0	0
Bureau of Engraving and Printing	4502	515,000	2,951	72	0	0
Numismatic Public Enterprise Fund	4504	375,932	1,176	0	0	0
Total, Intergovernmental Revolv. Fnd..		\$9,637,251	4,360	72	215	0
TOTAL, Special, Revolving Funds.....		\$13,059,940	6,885	77	215	0
<b>Trust Revolving Funds</b>						
Comptroller of the Currency	8413	393,250	3,503	129	0	0
Total, Trust Revolving Funds.....		\$393,250	3,503	129	0	0
<b>General Funds</b>						
U.S. Customs Service, S&E	Special Fund 0602	672,946	974	0	0	0
Internal Revenue Service (A&M)	Special Fund 0812	119,000	0	0	0	0
Total, General Funds.....		\$791,946	974	0	0	0
Misc. Permanent Approp. Trust Fund	Special Fund 9822	184,112	365	0	0	0
TOTAL, Department of the Treasury.....		\$14,433,248	10,727	206	215	0

Mr. MICA. I thank you.

I will recognize Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration, in the Department of Veterans Affairs.

Mr. BRICKHOUSE. Good morning, Mr. Chairman and members of the subcommittee.

I appreciate the subcommittee's interest in how executive branch agencies planned for and implemented the recent government shutdown, and I will be pleased to share with you our experiences in the Department of Veterans Affairs. With your permission, I will provide a brief summary of my written statement, and then I will be glad to respond to any questions.

VA started planning for a potential lapse of appropriations in early August. We had the benefit of previous guidance from OMB and from the Justice Department. Also, OPM issued extensive questions and answers regarding furloughs which were very helpful. Current OMB and Justice Department guidelines were received well before the end of the month and provided further assistance to us in our planning efforts.

As you are aware, the VA is a large department with multiple missions, including health care for veterans, delivery of compensation, education and other benefits, and operation of the National Cemetery System. Because of this diversity, we asked each of our operating components to develop shutdown plans appropriate to their individual programs. These were independently reviewed by our general counsel to ensure that legal requirements were met and were then incorporated in our VA-level plan.

The plan was ready for implementation when needed on November 14 and was put into effect by operating VA managers and supervisors. The plan called for continuation of direct medical care to veterans as well as other activities which are in the excepted category. This included police and security services, benefit determinations for excepted functions, receipt and processing of payments, management of government property, and interments in our national cemeteries.

VA had some activities which were not dependent on appropriated funds, and these were allowed to continue. These included operation of the Veterans Canteen Service, certain medical research activities, operation of the VA supply system, and the medical care cost recovery system for third-party insurers.

At the close of the shutdown period, approximately 206,000 employees had been designated as excepted, and another 33,000 were in furlough status. Clearly, the impact of the shutdown was felt by the veterans and family members whose calls went unanswered, whose appointments were canceled, whose claims for benefits were delayed. And although direct patient care continued, our medical facilities felt the strain of suppliers and contractors who were reluctant to proceed with orders when there was no funding to back them up.

I think all of us hope earnestly that another shutdown will not be necessary. With regard to VA's plan, we believe that it met the requirements of the law while making use of every possible opportunity to continue service to veterans. I would like to close with a word of praise for VA managers, supervisors, and employees. They

implemented the shutdown, unwelcome as it was, in an orderly, responsible fashion, and we can be proud of them.

Thank you, Mr. Chairman and members of the subcommittee. I would be glad to answer any questions.

[The prepared statement of Mr. Brickhouse follows:]

Statement of Eugene A. Brickhouse  
Assistant Secretary for Human Resources and Administration  
Department of Veterans Affairs  
Before the Committee on Government Reform and Oversight  
Subcommittee on Civil Service  
December 6, 1995

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before the Subcommittee today to provide VA testimony relating to the recent Government shutdown. The following will detail, point-by-point, the concerns expressed in Chairman Mica's letter inviting VA to appear here.

**Process for developing and implementing shutdown plans**

The Department of Veterans Affairs (VA) initiated formal shutdown planning in August 1995, in anticipation of a potential lapse in appropriations on September 30. VA is a large, complex, and geographically dispersed organization with multiple missions and responsibilities. Our approach in shutdown planning was to develop an overall plan for the Department based on input from VA's three major line organizations (Veterans Health Administration, Veterans Benefits Administration and National Cemetery System) as well as headquarters staff offices. Advisory and coordination services were available from my office (Human Resources and Administration), and we also assembled teams

of human resources specialists to assist Central Office and field activities with their planning efforts.

Organizations within VA were asked to review their operations and identify the number of employees who should be excepted from furlough, based on long-standing criteria related to protection of life and property (OMB guidance issued in 1980, 1981, 1990), as well as those who would be needed for the orderly shutdown of non-excepted activities. Plans, at a minimum, were to contain:

- Excepted activities and number of employees necessary to carry out those activities;
- Description of activities shutdown employees would perform, length of time needed, and number of employees necessary to carry out those activities;
- Procedures to notify customers of suspension/reduction of activities; and
- Procedures to notify employees of their status relative to excepted or non-excepted activities.

Current guidance from the Office of Management and Budget (OMB) and the Department of Justice (DOJ) was made

available to VA planning officials on August 22, 1995, and assisted them in developing their plans and making the necessary determinations regarding excepted and non-excepted activities.

Individual office plans were reviewed by VA's Office of General Counsel in order to ensure legal compliance with guidelines from the Department of Justice on excepted activities. VA's Human Resources Management office then developed a consolidated Departmental plan, which was submitted to OMB (Attachment A).

As an integral part of our planning process, employee unions were kept informed through communication with the VA National Partnership Council. This consists of representatives of VA's five unions with national bargaining rights, as well as key management officials from line and staff organizations. In addition, Memoranda of Understanding (Attachment B) were signed with two of the largest of VA's unions, the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE); these were shared with local facilities having applicable bargaining units.

Although the lapse in appropriations did not occur on September 30, 1995, the Departmental plan was complete and ready for implementation when needed on November 13, 1995.

Guidance VA received with respect to its shutdown from OMB, the Office of Personnel Management (OPM), and/or other federal agencies

Initial planning was developed in accordance with OMB Memorandum M-95-18 and accompanying guidance from the Department of Justice. As the situation developed, OMB continued to provide guidance on a range of policy and operational matters (e.g., whether employees should report to work on November 13 and 14, and when shutdown operations should actually commence) through Memoranda M-96-01 and M-96-02. (Copies provided at Attachment C)

OPM was very responsive in providing assistance and guidance regarding the full range of personnel issues involved in the furlough. In addition, the Interagency Advisory Group (IAG), which is a consortium of agency directors of personnel, met regularly with OPM, OMB and Department of Labor (DOL) representatives. The IAG provided a very helpful forum for discussion of furlough issues and dissemination of information and guidance throughout the Federal human resources management community. In addition to these resources, guidance on unemployment compensation matters was provided by DOL.

**Number of VA employees furloughed, number who continued working beyond the lapse of appropriations, and VA services and functions performed during shutdown**

The data below provides the number of employees estimated in VA's original plan compared with revised estimates as of November 17, 1995.

PLAN ESTIMATE		REVISED ESTIMATE	
EXCEPTED	FURLOUGHED	EXCEPTED	FURLOUGHED
200,392	36,354	205,668*	33,411

\*This number includes 1,700 employees in the Veterans Benefits Administration who would have been recalled on November 20 if the furlough had continued to help with receiving and dating benefits claims.

With regard to services which were continued during the shutdown, the vast majority of employees who were determined to be performing excepted activities serve in the Veterans Health Administration and are involved in providing or supporting medical services to veterans. Police and security services were also continued in order to ensure the safety of veterans, their families and employees while in a VA health care facility, and to protect government property, buildings and grounds.

The Veterans Benefits Administration originally identified 442 employees nationwide as performing excepted

activities. These included determination of eligibility for benefits associated with other excepted VA activities (e.g., medical care and burial claims), receipt and processing of payments, management of government property, and maintenance of automated records systems. At the time the furlough ended, an additional 1,700 employees were being recalled to receive and date benefits claims, assist applicants in filing claims and respond to inquiries about VA benefits. We determined that the potential for adverse effects of delays in receipt of applications qualified for an exception under the Antideficiency Act.

In the National Cemetery System, 438 employees were identified to continue interments and necessary management direction in the national cemeteries, since denial of burial would result in health hazards to employees or others, not to mention the resulting financial hardship and mental anguish to family members. Processing of applications for veterans gravemarkers and routine maintenance at national cemeteries were not considered excepted and employees associated with those activities were furloughed.

Other excepted activities included arrangements for delivery for medical supplies and other essential goods to facilities where excepted activities were taking place; operation of automated systems needed in support of excepted or appropriate payroll functions; legal representation for

the Department at scheduled court appearances; and management direction and technical support to excepted activities in the field. Certain functions in the Department were not affected by the furlough because they are funded through revolving funds, or other mechanisms not dependent on current year appropriations. These are accounted for in the Department's shutdown plan and are discussed further below under the heading "Functions and activities that were continued."

#### **Compliance with shutdown guidance**

As previously mentioned, input to the Department's plan was reviewed by the Office of General Counsel to ensure legal compliance with applicable guidelines. This plan provided the framework for shutdown of operations on November 14, 1995, with management of the process overseen by the established chain of command within each organization. Immediately after the shutdown ended, OMB requested information from agencies regarding costs and services to the public which had been impacted. This information was developed in VA based on input from the respective program offices and was forwarded to OMB as requested (Attachment D). Close coordination with employee unions through VA's National Partnership Council also provided independent perspective for monitoring the integrity with which the plan was implemented.

**Guidance on personnel issues**

Information about continuation of benefits, pay, unemployment compensation and other personnel matters was provided to the designated human resources management liaison in the headquarters office of each Under Secretary, Assistant Secretary, and comparable official. They in turn distributed information to their employees through hard-copy handouts, fax messages, e-mail, and other electronic information systems as appropriate to their own organizations. Information was also communicated directly to human resources management officials at VA field facilities through regularly scheduled conference calls, during which there were opportunities to ask questions or request additional information or clarification on policies or procedures. Copies of agency guidance or policy directives issued are attached (Attachment E).

As previously mentioned, the Office of Personnel Management provided timely and responsive guidance and information throughout the planning period. OPM guidance was included in the information distributed through the human resources management liaisons.

**Communications on shutdown**

Copies of VA employee broadcast messages, media talking points, and similar items are attached (Attachment F). As indicated previously, additional information was disseminated to employees through human resources management liaisons in the various administrations and staff offices.

**Functions and activities that were continued**

Information on activities that were excepted based on DOJ guidelines regarding protection of life and property are described above and in the VA shutdown plan. Also described in the plan are activities which continued because funding was not tied to annual appropriations. These include the following:

- The Veterans Canteen Service operates through a revolving fund which permits it to operate to the extent that funds are available. It provides food, retail and other services for the benefit of VA medical center patients and employees.
- Prosthetic and medical research activities funded by grants from outside sources, funded under a multi-year appropriation which was still current, or which were at critical stages and could not be shutdown without

endangering the lives of participating patients, were continued.

- Acquisition and Materiel Management activities are funded through the Supply Fund, a revolving fund, as are activities of the Office of Small and Disadvantaged Business Utilization, and were continued.
- Medical Care Cost Recovery activities provide income to the government through recovery of third party insurance collections, and are funded through a revolving fund. These activities were continued.

#### **Costs or savings associated with the shutdown**

We estimate that the cost of shutting down VA during the period of the lapse in appropriation was approximately \$27 million, the majority of which is payroll.

#### **Assumptions on length of shutdown for planning purposes**

VA based its plans on a relatively brief shutdown of one day or a very few days, which resulted in a shutdown of the majority of administrative support functions in headquarters and elsewhere. It was recognized that if the furlough were to extend beyond that period, additional

personnel would need to be called back at least for limited periods. Additional information is provided under the heading "Impact on functions and positions in VA if furlough would continue" below.

**Impact on functions and positions in VA if furlough would continue**

Attachment D contains information VA provided to OMB regarding the impact of a continuing lapse of appropriations on agency operations. Although specific planning data is not available regarding longer term shutdown scenarios, some adjustments would be indicated to alleviate the more severe operational consequences. This would need to be considered in the context of legal requirements and any further guidance or interpretations from OMB or the Attorney General's office. Also, plans would need to be adjusted to provide for activities such as compliance with administrative and personnel requirements should furloughs last beyond 30 days.

**VA's plan in the event of debt ceiling restriction**

VA did not develop a separate plan for the debt ceiling restrictions.

This concludes my statement, Mr. Chairman. I will be pleased to answer any questions you or members of the Subcommittee may have.

**Attachment A**

**Department of Veterans Affairs Shutdown Plan  
September 1995**



DEPARTMENT OF VETERANS AFFAIRS  
DEPUTY ASSISTANT SECRETARY FOR BUDGET  
WASHINGTON DC 20420

SEP 15 1995

Ms. Toni S. Hustead  
Chief, Veterans Affairs Branch  
Office of Management and Budget  
Executive Office of the President  
Washington, DC 20503

Dear Ms. Hustead:

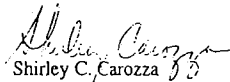
This will follow up on the Secretary's letter to Ms. Rivlin of September 5, 1995, forwarding the Department's shutdown plan in the event of a lapse in appropriation.

As VA organizational components continue to refine their contingency plans, some adjustments of the data provided earlier are in order. An updated copy of the plan is enclosed. An annotated copy of the previous plan and the Secretary's September 5 transmittal letter are also provided, so that your staff can easily pinpoint the numbers which have changed.

The revised figures are based on further consideration of operational requirements at health care facilities under shutdown guidance and a determination that fewer staff would be continued at veterans benefits facilities. As you can see, this results in a slight increase in the total number of employees who would be furloughed immediately, and a decrease in those who would be retained to perform excepted activities.

We will continue to keep you informed should further developments result in any significant changes to our planning scenario. Questions may be referred to Ron Cowles, Deputy Assistant Secretary for Human Resources Management, at 273-4920 (executive level contact) and Jim Kirk, Title 5 Staffing Division, at 565-8836 (staff level contact).

Sincerely yours,

  
Shirley C. Carozza

Enclosure

**DEPARTMENT OF VETERANS AFFAIRS  
PLAN FOR SHUTDOWN IN ABSENCE OF APPROPRIATION**

OFFICE	PERFORM/EXCEPTED GRUNDED ACTIVITIES		PERFORM/SHUTDOWN ACTIVITIES		IMMEDIATE BUDGETS		EXCEPTED ACTIVITIES EXPLANATIONS	
	CO	Field	CO	Field	CO	Field	CO	Field
Secretary	6				33			
Office of Small and Disadvantaged Business Utilization (Rev. Fund)	13		0		0			
Board of Veterans Appeals	1		1		442			
General Counsel	3	57			223	409	Fid - Continue with Existing Court Appearances, CO & Fid - Advise Field Facilities on Legal Issues re excepted activities	
Board of Contract Appeals	0		2		10		Support Ongoing Prosecutions in Court & Undercover Work in Progress	
Inspector General	9				378			
Public & Intergovernmental Affairs Management	2				64			
	176	262	27	9	383	735	CO & Fid - Fiscal, Including Support of Excepted Activities and Fiscal Obligations Incurred in FY 95 Supply (All Excepted-Non- Appropriated Funds), and Telecomm./Computer Support to Excepted Activities	
Human Resources & Administration	7		7		377		Provide Protection of Secretary & Conduct Criminal Investigation	
Policy and Planning	1		0		85			
Office of Congressional Affairs	1		2		28			
Veterans Health Administration	25	199,012	10	NA	780	18,443	Delivery & Support of Health Care Activities	
Veterans Benefits Administration	13	366	0		483	12,529	Determine Eligibility for Benefits Associated with Excepted Activities	
National Cemetery System	9	429	0		160	834	Provision of Gravesites & Interments	
<b>TOTAL</b>	<b>266*</b>	<b>200,126</b>	<b>49</b>	<b>9</b>	<b>3404</b>	<b>32,950</b>		

\*Includes 13 Presidential appointees  
Updated 9/15/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Health Administration  
Impact of Absence of Appropriations**

The Veterans Health Administration will discontinue all nonexcepted activities in its headquarters offices, medical centers, outpatient clinics, and other health care support facilities. Employees will be notified of their status and those who perform nonexcepted activities will be given furlough notices on September 29 or 30, 1995, and be advised to listen to news broadcasts during the weekend to learn if the budget situation has changed. Excepted activities to provide health care, research, and protection of life and property will be fully maintained.

Medical Care

No veteran will have his or her care delayed, deferred, canceled, or otherwise adversely impacted as a result of shutdown activities. In the field, excepted activities have been identified to include all direct patient care activities and those support activities necessary to assist direct patient care providers and maintain service to patients. All excepted activities will be fully maintained during any furlough period. All employees engaged in nonexcepted activities will be furloughed.

Canteen Service

The VA Canteen Service operates on non-appropriated funds, therefore, all VCS activities will be fully maintained during any furlough period to support employees engaged in excepted activities.

Protection of Life and Property

Police and Security services will be provided in order to ensure the safety of veterans and their families and employees while in a VA facility. Continuation of these services is also necessary to protect and secure government property, buildings, and grounds. These services will be fully maintained during any furlough period.

### Prosthetic and Medical Research

Many research projects in VA are funded by grants from outside sources, therefore, they will be fully maintained during any furlough period. Additionally, a number of projects are at critical stages where their shutdown could endanger the lives of patients who are participating in them as test subjects. These activities will be fully maintained during any furlough period. All employees not identified with these excepted activities or not otherwise funded will be furloughed.

### VHA Headquarters Staff

Medical Administration and Miscellaneous Operating Expenses is a personnel intensive activity. Twenty-five employees have been identified to perform excepted activities such as manage VHA's overall operations, organ transplantation issues, operational and policy issues for VA medical centers, allocation of resources to excepted activities, and oversee construction contractual obligations. These activities will be fully maintained during any furlough period. An additional 770 employees not identified with these limited excepted activities will be furloughed.

### Staffing Requirements

#### Employees performing excepted activities

Central Office	25
Field Facilities	199,012

#### Employees performing shutdown activities, then furloughed

Central office	10
Field Facilities	Not applicable

#### Employees to be furloughed immediately

Central office	760
Field Facilities	18,443

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Benefits Administration  
Impact of Absence of Appropriations**

The Veterans Benefits Administration will discontinue all nonexcepted activities in its headquarters offices, Area Offices, Benefits Centers, and Regional Offices. Employees who perform nonexcepted activities will be given notices of their status on September 29, 1995, and be advised to listen to news broadcasts to learn if there is a change in the funding situation. Employees performing excepted services will be available to serve veterans and their families.

VBA has identified 442 employees nationwide as performing excepted activities. The employees in Central Office will oversee management of VBA excepted operations. The excepted employees at field facilities will determine eligibility for benefits associated with other excepted VA activities (claims for burial, terminal illness, medical care), receive and process payments, manage issues involving government property, and maintain VBA's automated records systems. These activities will be fully maintained during any furlough period.

**Staffing Requirements**

**Employees performing excepted activities**

Central Office	13
Field Facilities	366

**Employees performing shutdown activities, then furloughed**

Central office	Not applicable
Field Facilities	Not applicable

**Employees to be furloughed immediately**

Central office	483
Field Facilities	12,529

Updated 9/15/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
National Cemetery System  
Impact of Absence of Appropriations**

The National Cemetery System will discontinue all nonexcepted activities in the absence of appropriations. Employees will be notified of their status on September 29 or 30, 1995, and be advised to listen to news broadcasts to learn if they are to return to work on October 2, 1995.

Veterans and their families have placed reliance on the National Cemetery System to provide gravesites at their time of need. Denial of burial to these applicants would impose financial hardship, and in many cases, mental anguish. Delay of interment may also result in health hazards for employees or others. Therefore, the National Cemetery System will continue to bury eligible veterans during the period covered by the absence of appropriations. Central Office employees performing excepted activities will provide management direction and control, and operational support to the field. Employees in the field performing excepted activities determine eligibility for burial, supervise interment operations, and provide for property protection.

**Staffing Requirements**

Employees performing excepted activities

Central Office	9
Field Facilities	429

Employees performing shutdown activities, then furloughed

Central office	Not applicable
Field Facilities	Not applicable

Employees to be furloughed immediately

Central office	160
Field Facilities	834

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Headquarters Support Organizations  
Impact of Absence of Appropriations**

In the absence of appropriations, headquarters support organizations and their outstationed activities which provide technical assistance to other headquarters elements and to field operations will shutdown all nonexcepted activity. This will result in 3,145 employees being given furlough notices September 29, 1995, and an additional 48 employees when they complete shutdown activities. The remaining headquarters staff, including 319 outstationed employees will be on duty to perform excepted activities. Employees will be advised to listen to news broadcasts to learn if the funding situation changes. If the budget is signed or a continuing resolution is passed, they will return to work as usual on Monday, October 2, 1995.

Employees retained to perform shutdown activities will secure all files and government property, notify customers of our reduced activity level, turn off computer operations, and leave their offices and enter furlough status.

Excepted activities performed during the furlough period will include management of the department, including outstationed components of 222 Acquisition and Materiel Management employees paid through the nonappropriated supply fund, 13 employees of the Office of Small and Disadvantaged Business Utilization paid through a revolving fund, 40 information resources and financial management employees in Austin, and 57 members of the Office of the General Counsel distributed throughout the United States.

Acquisition and Materiel Management personnel will continue to secure and arrange for delivery of medical supplies and other essential goods to facilities where excepted activities are taking place. They will maintain contacts with vendors and ensure on time delivery of requested items.

The information resources and financial management employees in Austin will operate on-line systems run situation-dependent required batch processing operations as needed in support of excepted activities. They will also process payroll for the periods prior to fund interruption and process payroll for staff of excepted activities.

The General Counsel's employees throughout the United States will continue with ongoing court appearances and provide guidance and advice to excepted activities as needed.

Employees performing excepted activities in headquarters will provide technical support to excepted activities in the field as well as to other headquarters organizations. Protection of life and property activities will continue. Included in these activities are protection of the Secretary, ongoing undercover work associated with criminal investigations, and investigations of incidents related to excepted activities.

#### Staffing Requirements

##### Employees performing excepted activities

Central Office	219
Field Facilities	319

##### Employees performing shutdown activities, then furloughed

Central office	39
Field Facilities	9

##### Employees to be furloughed immediately

Central office	2,001
Field Facilities	1,144

## Action Plan for Lapsed Appropriation Furloughs

Date	Action Item	Responsible Official
July 26	004 and 006 staff meet to begin the FY 1996 lapsed appropriation furlough process.	004 and 006
July 26	Contact OMB and OPM regarding guidance updates.	004 and 006
August 10	Develop memo with attached guidance to direct VA organizations to submit organization plans to accomplish furloughs and to identify excepted activities from furlough to continue patient care and protect property, and essential employees for orderly shutdown of nonexcepted activities.	004 and 006
August 14	Memo handed out at Key Staff Meeting.	Deputy Secretary
August 18	Provide memo and guidance to VANPC members. Inform them they will be briefed on organizational plans.	006
August 28	Plans submitted by Organizations.	Organization Heads
August 31	Provide copies of organizational plans to VANPC members and brief them by teleconference. Concurrently meet national consultation/bargaining obligations as appropriate.	006
Sept 1	VA plan submitted to the Deputy Secretary.	004 and 006
Sept 5	Plan approved and sent to OMB.	Deputy Secretary
Sept 13	Set of master employee furlough letters and furlough guidance ready, distribution process to CO and field finalized.	006
Sept 14	Review OMB response to plan.	004 and 006
Sept. 28-30	Distribute furlough notices upon direction from OMB.	006 and Organizations
Oct. 1	Begin initial furlough of employees not required for orderly shutdown.	Organizations
Oct. 2-6	Furlough personnel involved in orderly shutdown.	Organizations
Post Oct 1	If furlough delayed based on some form of a continuing resolution, maintain readiness.	004 and 006

## VA Plan for Implementation of Furloughs in Event of Lapsed Appropriations

### Responsible Organization

The Office of Human Resources and Administration (OHR&A) will be the responsible VA office for coordinating activities necessary to implement lapsed appropriation and similar furloughs, including the following:

- 1) be the point of contact with OMB and OPM on all related matters to potential furloughs,
- 2) provide information regarding plans for furlough to the VA National Partnership Council,
- 3) prepare instructions and guidance to all VA facilities regarding furlough issues, and
- 4) conduct briefings/conferences to field and central office officials regarding furlough information and procedures,

### Furlough Process

OHR&A will provide in advance written procedures and master furlough notices to all VA organizations and ensure complete pre-furlough distribution to all facilities through a variety of electronic media.

OHR&A will initiate conference calls to ensure that each facility's lapsed appropriation contact official has complete understanding of procedures and the budget situation as it develops.

OHR&A will plan with all VA facilities that in the event that OMB advises that there will be no VA appropriations on October 1, furlough notices to be delivered to affected employees on September 29 unless OMB provides for an alternative date.

Facilities keep employees and unions informed as to the status of possible furlough, including exclusions from furlough.

Facilities will individually deliver all furlough notices to affected employees.

Each facility will inform all employees of the means by which employees will be notified to return to work after the furlough.

**Attachment B**

**Memoranda of Understanding with AFGE/NFFE**

The following constitutes agreement between the Department of Veterans Affairs (Management) and the American Federation of Government Employees, AFL-CIO, National VA Council (Union) concerning furlough as a result of the lapse in appropriations for FY 1996.

1. Management will inform employees of the effects of the furlough on their entitlement to retirement, life and health insurance and other benefits.
2. Title 5 and Title 38 employees shall be informed of their rights to grieve or appeal, as appropriate.
3. Management agrees not to object to employees(s) filing for unemployment benefits during the furlough.
4. Consistent with applicable law and regulations, management will continue to provide the full employer contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by the change (FPM Chapter 890 and Supplement 890-1).
5. Upon request, furloughed employees will be provided assistance by the Department in locating outside employment so as to avoid or minimize income lost as a result of the furlough. Such assistance shall include among other things:
  - (a) use of local facilities for groups and individual meetings to pursue outside employment;
  - (b) waivers of restriction on outside employment to the extent permissible under applicable law and government regulations. If approval of outside employment is required, the employer will give it priority consideration following the submission of the necessary oral explanation or documentation and will attempt to provide a response as soon as possible prior to the furlough day(s).
  - (c) use of sufficient administrative leave to contact Federal job placement officials and employment agencies.
  - (d) use of sufficient administrative leave for counseling on and applying for unemployment benefits.
6. The Department of Veterans Affairs shall not in accordance with law attempt to dissuade its employees from exercising their 1st amendment rights, i.e., to express their feelings, perception and factual matters concerning the proposed furlough.
7. In the event funding is subsequently provided to the Department and the Department has the discretion to retroactively pay employees, the Department will grant employees who suffer a loss of pay through furlough administrative leave equal to the lost time.

2.

8. In rating employees on annual performance, management will take into consideration the impact due to absence from work of employees as a result of the furlough.

9. Employees will not be denied performance awards or rated lower for purposes of such awards due solely to furlough.

10. Any official time lost as a result of a furlough will be recouped at a later date and scheduled as appropriate.

11. The Department does not intend to assign overtime work due to a shortage of employees during the furlough.

12. The Department shall make a good faith effort to minimize the number of furlough days and thereby limit the monetary impact on employees.

13. If a funding measure is passed during the period of furlough, the Department will attempt to contact all employees to return to work. If such contact is not successful, employees will not be considered to be AWOL. Those employees will be granted LWOP or annual leave as appropriate upon their return to duty.

14. Once excepted positions are identified, employees within those positions may volunteer to be furloughed and such volunteers will be considered.

15. In accordance with E.O. 12871, 5 U.S.C. 7106 (b)(1) matters are mandatory subjects for local bargaining.

16. If for some unforeseen reason or unusual circumstance, employees are in travel status when the furlough occurs, the Department will return said employees to their duty station at government expense.

17. Facilities will seriously consider NPR guidance with respect to employee/supervisor ratio in determining who will be furloughed.

18. If local conflicts cannot be resolved in a timely manner, seniority will be the tie breaking factor for retention during furlough.

19. Except under the most unusual circumstances, when the furlough ceases, employees furloughed will return to their same tours of duty, duty locations and work schedules.

20. When determining which positions are excepted from furlough, it should be considered that Union officials have a statutory obligation to represent its constituents.

3.

21. When feasible and if the local parties agree, furloughs will be spread out among employees in affected competitive levels to minimize the impact on each employee and the disruption of the Department activities. All employee shall be accorded fair and equitable treatment consistent with this agreement.

22. Within two (2) workdays, the Department will forward this signed agreement to local facilities and instruct them to give a copy to the local union upon receipt. The Local Union may request bargaining and such a request shall be honored.



For Management



For Union

9/13/95  
DATE

# NFFE FURLOUGH AGREEMENT

The following constitutes agreement between the Department of Veterans Affairs (Management) and the National Federation of Federal Employees, NFFE, National VA Council (Union) on behalf of its locals concerning impact and implementation bargaining as it regards furlough as a result of the lapse in appropriations for FY 1996.

1. Management will inform employees of the effects of the furlough on their entitlement to retirement, life and health insurance and other benefits.
2. Title 5 and Title 38 employees shall be informed of their rights to grieve or appeal, as appropriate.
3. Management agrees not to object to employees(s) filing for unemployment benefits during the furlough.
4. Consistent with applicable law and regulations, management will continue to provide the full employer contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by the change (FPM Chapter 890 and Supplement 890-1).
5. Upon request, furloughed employees will be provided assistance by the Department in locating outside employment so as to avoid or minimize income lost as a result of the furlough. Such assistance shall include among other things:
  - (a) use of local facilities for groups and individual meetings to pursue outside employment;
  - (b) waivers of restriction on outside employment to the extent permissible under applicable law and government regulations. If approval of outside employment is required, the employer will give it priority consideration following the submission of the necessary oral explanation or documentation and will attempt to provide a response as soon as possible prior to the furlough day(s).
  - (c) use of sufficient administrative leave to contact Federal job placement officials and employment agencies.
  - (d) use of sufficient administrative leave for counseling on and applying for unemployment benefits.
6. The Department of Veterans Affairs shall not in accordance with law attempt to dissuade its employees from exercising their 1st amendment rights, i.e., to express their feelings, perception and factual matters concerning the proposed furlough.
7. In the event funding is subsequently provided to the Department and the Department has the discretion to retroactively pay employees, the Department will grant employees who suffer a loss of pay through furlough administrative leave equal to the lost time.

2.

8. In rating employees on annual performance, management will take into consideration the impact due to absence from work of employees as a result of the furlough.

9. Employees will not be denied performance awards or rated lower for purposes of such awards due solely to furlough.

10. Any official time lost as a result of a furlough will be recouped at a later date and scheduled as appropriate.

11. The Department does not intend to assign overtime work due to a shortage of employees during the furlough.

12. The Department shall make a good faith effort to minimize the number of furlough days and thereby limit the monetary impact on employees.

13. If a funding measure is passed during the period of furlough, the Department will attempt to contact all employees to return to work. If such contact is not successful, employees will not be considered to be AWOL. Those employees will be granted LWOP or annual leave as appropriate upon their return to duty.

14. Once excepted positions are identified, employees within those positions may volunteer to be furloughed and such volunteers will be considered.

15. In accordance with E.O. 12871, 5 US. C 7106 (b)(1) matters are mandatory subjects for local bargaining.

16. If for some unforeseen reason or unusual circumstance, employees are in travel status when the furlough occurs, the Department will return said employees to their duty station at government expense.

17. Facilities will seriously consider NPR guidance with respect to employee/supervisor ratio in determining who will be furloughed.

18. If local conflicts cannot be resolved in a timely manner, seniority will be the tie breaking factor for retention during furlough.

19. Except under the most unusual circumstances, when the furlough ceases, employees furloughed will return to their same tours of duty, duty locations and work schedules.

3.

20. When determining which positions are excepted from furlough, it should be considered that Union officials have a statutory obligation to represent its constituents.

21. When feasible and if the local parties agree, furloughs will be spread out among employees in affected competitive levels to minimize the impact on each employee and the disruption of the Department activities. All employees shall be accorded fair and equitable treatment consistent with this agreement.

22. Within two (2) workdays, the Department will forward this signed agreement to local facilities and instruct them to give a copy to the local union upon receipt.

  
For Management

  
For Union

9/18/95  
/DATE

Attachment C  
OMB/DOJ Guidelines



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

August 22, 1995

664296

M-95-18

## MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM:

Alice M. Rivlin  
Director

SUBJECT:

Agency Plans for Operations During Funding Hiatus-

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981) requires all agencies to maintain contingency plans to deal with a possible appropriations hiatus. The bulletin requires agency plans to be consistent with the January 16, 1981 opinion of the Attorney General on this subject.

The Office of Legal Counsel of the Department of Justice has issued an opinion dated August 16, 1995 that updates the 1981 opinion. A copy of the August 16th opinion is attached. You should review your plans in light of this opinion, make any changes necessary to conform to the opinion, and otherwise ensure your plan is up to date.

Please send a copy of your updated plan to your OMB program examiner no later than September 5, 1995. Any questions should be directed to your program examiner.

Attachment



U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

August 16, 1995

**MEMORANDUM FOR ALICE RIVLIN  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

From: Walter Dellinger *WED/jm*  
Assistant Attorney General

Re: Government Operations in the Event of a Lapse in Appropriations

This memorandum responds to your request to the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations.<sup>1</sup>

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. See 31 U.S.C. § 1341 *et seq.*<sup>2</sup>

In the early 1980s, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations," 4A Op. O.L.C. 16 (1980); "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion). The 1981 Opinion has frequently been cited in the ensuing years. Since that opinion was written, the Antideficiency Act has been amended in one

<sup>1</sup> We do not in this memorandum address the different set of issues that arise when the limit on the public debt has been reached and Congress has failed to raise the debt ceiling.

<sup>2</sup> For the purposes of this inquiry, there are two relevant provisions of the Antideficiency Act. The first provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The second provides that "[a]n officer or employee of the United States Government . . . may not accept voluntary services . . . or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

respect, and we analyze the effect of that amendment below. The amendment amplified on the emergencies exception for employing federal personnel by providing that "[a]s used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

With respect to the effects of this amendment, we continue to adhere to the view expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger to Robert G. Damus, October 19, 1993. In order to ensure that the clarification of the 1990 amendment is not overlooked, we believe that one aspect of the 1981 Opinion's description of emergency governmental functions should be modified. Otherwise, the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.

#### I.

Since the issuance of the extensive 1981 Opinion, the prospect of a general appropriations lapse has arisen frequently. In 1981, 1982, 1983, 1984, 1986, 1987 and 1990, lapses of funding ranging from several hours to three days actually did occur. While several of these occurred entirely over weekends, others required the implementation of plans to bring government operations into compliance with the requirements of the Antideficiency Act. These prior responses to the threat of or actual lapsed appropriations have been so commonly referred to as cases of "shutting down the government" that this has become a nearly universal shorthand to describe the effect of a lapse in appropriations. It will assist in understanding the true extent of the Act's requirements to realize that this is an entirely inaccurate description. Were the federal government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill. Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping. The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result. In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate. Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed. Were the federal government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close

their doors. These are simply a few of the significant impacts of a federal government shut down. Cumulatively, these actions and the others required as part of a true shut down of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

The Antideficiency Act imposes substantial restrictions on obligating funds or contracting for services in advance of appropriations or beyond appropriated levels, restrictions that will cause significant hardship should any lapse in appropriations extend much beyond those we have historically experienced. To be sure, even the short lapses that have occurred have caused serious dislocations in the provision of services, generated wasteful expenditures as agencies have closed down certain operations and then restarted them, and disrupted federal activities. Nevertheless, for any short-term lapse in appropriations, at least, the federal government will not be truly "shut down" to the degree just described, simply because Congress has itself provided that some activities of government should continue even when annual appropriations have not yet been enacted to fund current activities.

The most significant provisions of the Antideficiency Act codify three basic restrictions on the operation of government activities. First, the Act implements the constitutional requirement that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. Second, when no current appropriations measure has been passed to fund contracts or obligations, it restricts entering into contracts or incurring obligations (except as to situations authorized by other law). Third, it restricts employing the services of employees to perform government functions beyond authorized levels to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.<sup>3</sup> The 1981 Opinion elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions, and we will only summarize the major categories here:

Multi-year appropriations and indefinite appropriations.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social security is a prominent example of a program that operates under an indefinite appropriation. In such

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<sup>3</sup> These restrictions are enforced by criminal penalties. An officer or employee of the United States who knowingly and willfully violates the restrictions shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. §1350.

cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriation.

- Express authorizations: contracting authority and borrowing authority.

Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the "food and forage" authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication (the exception addressed next in the text), standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.

- Necessary implications: authority to obligate that is necessarily implied by statute.

The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations. Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception. In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized "to incur those minimal obligations necessary to closing [the] agency." The 1981 opinion reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.

- Obligations necessary to the discharge of the President's constitutional duties and powers.

Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the "President's obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry

out his constitutionally assigned tasks in the manner he contemplates." 1981 Opinion, at 6-7.<sup>4</sup>

- Personal or voluntary services "for emergencies involving the safety of human life or the protection of property."

The Antideficiency Act prohibits contracting or obligating in advance of appropriations generally, except for circumstances just summarized above. The Act also contains a separate exception applicable to personal or voluntary services that deal with emergencies. 31 U.S.C. § 1342. This section was amended in 1990. We will analyze the effects of that amendment in Part II of this memorandum.

Finally, one issue not explicitly addressed by the 1981 Opinion seems to us to have been settled by consistent administrative practice. That issue concerns whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded. The correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear. However, with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342.

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<sup>4</sup> The Attorneys General and this office have declined to catalog what actions might be undertaken this heading. In 1981, for example, Attorney General Civiletti quoted Attorney General (later Justice) Frank Murphy. "These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. . . . The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action." 5 Op. O.L.C. at 7 n.9 (quoting 39 Op. Att'y Gen. 343, 347-48 (1939)). This power should be called upon cautiously, as the courts have received such executive branch assertions skeptically. See, e.g., *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *George v. Ishimaru*, 849 F. Supp. 68 (D.D.C.), vacated as moot, No. 94-5111, 1994 WL 517746 (D.C. Cir., Aug. 25, 1994). But see *Haig v. Agee*, 453 U.S. 280 (1981); *In re Neagle*, 135 U.S. 1 (1890).

## II.

The text of 31 U.S.C. §1342, as amended in 1990, now reads:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. § 1342. Because of the § 1342 bar on employing personal services, officers and employees may employ personal services in excess of other authorizations by law only in emergency situations.<sup>5</sup> This section does not by itself authorize paying employees in emergency situations, but it does authorize entering into obligations to pay for such labor.

The central interpretive task under § 1342 is and has always been to construe the scope of the emergencies exception of that section. When the 1981 Opinion undertook this task, the predecessor to § 1342 did not contain the final sentence of the current statute, which was added in 1990. Examining that earlier version, the Attorney General concluded that the general language of the provision and the sparse legislative history of it did not reveal its precise meaning. However, the opinion was able to glean some additional understanding of the statute from that legislative history.

The Attorney General noted that as originally enacted in 1884, the provision forbade unauthorized employment "except in cases of sudden emergency involving the loss of human life or the destruction of property." 23 Stat. 17. He then observed that in 1950, Congress

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<sup>5</sup> The 1981 Opinion concluded that:

[d]espite the use of the term 'voluntary service,' the evident concern underlying this provision is not government agencies' acceptance of the benefit of services rendered without compensation. Rather, the original version of § [1342] was enacted as part of an urgent deficiency appropriation act in 1884, Act of May 1, 1884, ch. 37, 23 Stat. 15, 17, in order to avoid claims for compensation arising from the unauthorized provision of services to the government by non-employees, and claims for additional compensation asserted by government employees performing extra services after hours. This is, under § [1342], government officers and employees may not involve government in contract for employment, i.e., for compensated labor, except in emergency situations. 30 Op. Att'y Gen. 129, 131 (1913).

enacted the modern version of the Antideficiency Act and accepted revised language for § 1342 that originally had been suggested by the Director of the Bureau of the Budget and the Comptroller General in 1947. In analyzing these different formulations, the Attorney General stated that

[w]ithout elaboration, these officials proposed that 'cases of sudden emergency' be amended to 'cases of emergency,' 'loss of human life' to 'safety of human life,' and 'destruction of property' to 'protection of property. These changes were not qualified or explained by the report accompanying the 1947 recommendation or by any aspect of the legislative history of the general appropriations act for fiscal year 1951, which included the modern §[1341]. Act of September 6, 1950, Pub. L. No. 81-759, §1211, 64 Stat. 765. Consequently, we infer from the plain import of the language of their amendments that the drafters intended to broaden the authority for emergency employment.

5 Op. O.L.C. at 9.

The 1981 Opinion also sought guidance from the consistent administrative practice of the Office of Management and Budget in applying identical "emergencies" language found in another provision. That other provision prohibits OMB from apportioning appropriated funds in a manner that would indicate the need for a deficiency or supplemental appropriation, except in cases of "emergencies involving the safety of human life, [or] the protection of property" — phraseology identical to the pre-1990 version of § 1342.<sup>4</sup> Combining these two sources with the statutory text, the Attorney General articulated two

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<sup>4</sup> 31 U.S.C. § 1515 (recodified from § 665(e) at the time of the Civiletti opinion). Analyzing past administrative practice under this statute, Attorney General Civiletti found that:

Directors of the Bureau of the Budget and of the Office of Management and Budget have granted dozens of deficiency reapportionments under this subsection in the last 30 years, and have apparently imposed no test more stringent than the articulation of a reasonable relationship between the funded activity and the safety of human life or the protection of property. Activities for which deficiency apportionments have been granted on this basis include [FBI] criminal investigations, legal services rendered by the Department of Agriculture in connection with state meat inspection programs and enforcement of the Wholesome Meat Act of 1967, 21 U.S.C. §§ 601-695, the protection and management of commodity inventories by the Commodity Credit Corporation, and the investigation of aircraft accidents by the National Transportation Safety Board. These few illustrations demonstrate the common sense approach that has guided the interpretation of § 665(c). Most important, under § 665(c)(2), each apportionment or reapportionment indicating the need for a deficiency or supplemental appropriation has been reported contemporaneously to both Houses of Congress, and, in the face of these reports, Congress has not acted in any way to alter the relevant 1950 wording of § 665(c)(1)(B), which is, in this respect, identical to § 665(h).

rules for identifying functions for which government officers may enter into obligations to pay for personal services in excess of legal authority other than § 1342 itself:

First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

While we continue to believe that the 1981 articulation is a fair reading of the Antideficiency Act even after the 1990 amendment, *see* Letter from Walter Dellinger to Robert G. Damus, October 19, 1993, we are aware of the possibility the second of these two rules might be read more expansively than was intended, and thus might be applied to functions that are not emergencies within the meaning of the statute. To forestall possible misinterpretations, the second criteria's use of the phrase "in some degree" should be replaced with the phrase, "in some significant degree."

The reasons for this change rest on our understanding of the function of the 1990 amendment, which comes from considering the content of the amendment, its structure and its sparse legislative history. That history consists of a solitary reference in the conference report to the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388:

The conference report also makes conforming changes to title 31 of the United States Code to make clear that . . . ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. Rep. No. 964, 101st Cong., 2d Sess. 1170 (1990). While hardly articulating the intended scope of the exception, the conference report does tend to support what would otherwise be the most natural reading of the amendment standing alone: because it is phrased as identifying the functions that should be excluded from the scope of the term "emergency," it seems intended to limit the coverage of that term, narrowing the circumstances that might otherwise be taken to constitute an emergency within the meaning of the statute.

Beyond this, however, we do not believe that the amendment adds any significant new substantive meaning to the pre-existing portion of § 1342, simply because the most prominent feature of the addition -- its emphasis on there being a threat that is imminent, or "ready to take place, near at hand," *see* Webster's Third New International Dictionary 1130 (1986) -- is an idea that is already present in the term "emergency" itself, which means "an unforeseen

combination of circumstances or the resulting state that calls for immediate action" to respond to the occurrence or situation. *Id.* at 741.<sup>7</sup> The addition of the concept of "imminent" to the pre-existing concept of "emergency" is thus largely redundant. This redundancy does, however, serve to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation. The structure of the amendment offers further support for this approach. Congress did not alter the operative language of the statute; instead, Congress chose to enact an interpretive provision that simply prohibits overly expansive interpretations of the "emergency" exception.

Under the formulation of the 1981 Opinion, government functions satisfy § 1342 if, *inter alia*, the safety of human life or the protection of property would be "compromised, in some degree." It is conceivable that some would interpret this phrase to be satisfied even if the threat were *de minimis*, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision. The brief delay of routine maintenance on government vehicles ought not to constitute an "emergency," for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may "compromise, to some degree" the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.

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<sup>7</sup> See also Random House Dictionary of the English Language Unabridged 636 (2d ed. 1987) ("emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action"); Webster's II New Riverside University Dictionary 427 (1988) ("an unexpected, serious occurrence or situation urgently requiring prompt action").



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
November 9, 1995

*Catlett  
Brickhouse  
Scott*

THE DIRECTOR

M-96-01

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

FROM: Alice M. Rivlin *AMR*  
Director

SUBJECT: Planning For Agency Operations

This memorandum is designed to help you plan your agency's activities for next week, in light of recent developments on fiscal 1996 appropriations.

The current Continuing Resolution (CR) expires at midnight on Monday, November 13, 1995. At this point, only two appropriations bills have been enacted for fiscal 1996. We do not know if Congress will pass a second acceptable CR by Monday that will continue funding for activities that lack appropriations. Because there is a real chance that this may not occur, you should begin planning now, as a contingency matter, as follows:

Today, Thursday, November 9. You should review your shutdown plans and ensure that your employees are properly informed. As noted above, the CR expires at midnight, Monday. Therefore, Monday, November 13th will be a normal workday for the Federal Government. You should advise employees to report for work on Monday.

Monday, November 13: All employees should report for work. We will advise you of further developments, including whether a CR will likely be enacted. If not, you should prepare to implement your shutdown plan on Tuesday.

Tuesday, November 14: Regardless of whether a CR has been enacted, all employees should report to work on Tuesday. We will advise you on whether your shutdown plan is to be implemented, as follows.

- Shutdown. If no CR has been enacted or will likely be enacted Tuesday, we will issue instructions initiating a phase-down of activities for non-excepted employees. You should complete such phase-down activities for non-excepted personnel, if called for, during the first three hours of the workday.

-- Normal Operations: If a CR will likely be enacted on Tuesday, we will advise agencies to operate in a normal manner.

Attached is a summary of our general guidance on agency operations in the absence of appropriations.

Thank you for your cooperation in these difficult circumstances. We will keep in close touch with you as developments unfold.

Attachment

General Guidance on Agency  
Operations in the Absence of Appropriations

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981), requires all agencies to maintain plans to deal with an appropriations hiatus. If a shutdown occurs, we assume each agency will be operating under its shutdown plan as approved by OMB in September. As a reminder, the Attorney General's opinion dated January 16, 1981, updated by the opinion of the Office of Legal Counsel dated August 16, 1995, remains in effect. In general:

- o Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property.
- o Agencies may not permit voluntary performance of non-excepted services; and
- o Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and this memorandum, and pursuant to normal agency processes for the resolution of issues of law and policy).

Please address any questions to your OMB budget examiner(s), or to OMB General Counsel Robert Damus (395-5044), or Associate General Counsel for Budget Rosalyn Rettman (395-4778).



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 13, 1995

THE DIRECTOR

M-96-02

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

FROM: Alice M. Rivlin *AMR*  
Director

SUBJECT: Planning for Agency Operations in the Absence  
of Appropriations

This memorandum follows up on my memorandum of last week, and is intended to provide further guidance on planning for shutdown.

The current Continuing Resolution (CR) expires at midnight tonight, Monday, November 13, 1995. We have no indication yet whether Congress will act today and pass an acceptable CR. Therefore, beginning tomorrow morning, Tuesday, November 14, 1995, the head of each agency must be prepared to implement his or her existing plan for closing down operations funded by accounts that have not received appropriations.

All employees should report to work tomorrow. During the day tomorrow, we will advise you on whether your shutdown plan is to be implemented, as follows:

- Shutdown. If no CR has been enacted or will likely be enacted Tuesday, we will issue instructions initiating a phase-down of activities for non-excepted employees.
- Normal Operations. If a CR will likely be enacted on Tuesday, we will advise agencies to operate in a normal manner.

Again, we thank you for your cooperation in these difficult circumstances. We will continue to keep in close touch with you as developments unfold.

Attachment D

Post-Shutdown Report on Costs/Service Impact

The Deputy Secretary of Veterans Affairs  
Washington

NOV 21 1995

Mr. John A. Koskinen  
Deputy Director for Management  
Office of Management and Budget  
Executive Office of the President  
Room 260, Old Executive Office Building  
Washington, DC 20503

Dear Mr. Koskinen:

Enclosed are the Department's responses to your requests for information concerning costs incurred by VA resulting from the shutdown and for a list of services to the public which were curtailed or denied during the shutdown.

Sincerely yours,

Hershel W. Gober

Enclosure

## **Department of Veterans Affairs**

### **Cost VA incurred during shutdown**

VA incurred some costs as a direct result of the shutdown. Following are some items that resulted in these costs. However, the actual costs to VA are not yet available.

Interest payments and lost discounts on vendor payments

Lost discounts on property taxes

Loss of prepaid tuition for training

### **Services to the Public which were curtailed or denied:**

Telephone calls from veterans to Veterans Benefits offices went unanswered

Mail from veterans was neither opened nor answered

Veterans Benefits offices were closed to "walk-in" veteran-clients

Vocational rehabilitation counseling appointments were canceled

Pending claims for compensation, pension, education and vocational rehabilitation were not processed

Retroactive payments for compensation, pension and education claims were not processed

Payments of GI Bill education checks and insurance death claims were delayed

Loan Guaranty certificates of eligibility and certificates of reasonable value were not issued

Property appraisals were not conducted

Counseling and services were not provided to veterans to help them avoid foreclosures

Beneficiary travel to VA medical facilities was decreased

**Services to the Public which were curtailed or denied (continued):**

Access was diminished to "800" numbers for information on CHAMPVA and for recruitment and placement services

Board of Veterans Appeals case processing and hearings were delayed

Applications for headstones and markers were not processed and orders were not placed for private, state, and national cemeteries

Markers and headstones received at national cemeteries were not placed on graves

Processing of requests for Presidential Memorial Certificates ceased

Applications from states for grants to build or improve state veteran cemeteries were not processed

Access was denied to some national cemeteries for some purposes

Weekend scheduling of interments for the following week was canceled for all national cemeteries

Payments to contractors for services already rendered at national cemeteries were not made. This was of great impact to small and minority contractors

Calls to the IG's Hotline went unanswered

FOIA requests from the media and public for IG reports went unanswered

IG internal audit operations were curtailed - including Congressionally-mandated CFO work

Nearly all IG criminal investigative work was halted

Acceptance of discrimination complaint and sexual harassment cases was halted

Collection ceased of monies owed the Department involving Medical Care Cost Recovery, bankruptcy cases, and other legal programs

Cases pending before the Court of Veterans Appeals were continued

**Services to the Public which were curtailed or denied (continued):**

Final agency decisions were not processed on FOIA/Privacy Act requests from the public

Review of contracts and other procurement matters was delayed which affected completion of various Department projects/facilities used by the public

Legal matters relating to veteran patients and claimants may have been delayed

Administrative hearings affecting Department employees and managers were delayed

Routine responses to Members of Congress and Committees were unavailable. One hearing was canceled. Casework in Senate and House liaison offices was suspended.

On-time payment of vendor invoices were not made

Vendor access to information on payment status was limited

Attachment E  
Agency Shutdown Guidance

**Department of  
Veterans Affairs****Memorandum**

Date: **AUG 14 1995**

From: Assistant Secretary for Human Resources and Administration (006)

Subject: Shutdown of Department Operations Due to an Absence of Appropriations

To: Administration Heads, Assistant Secretaries, and Other Key Officials

1. At this time it is unclear if VA's budget for Fiscal Year 1996 will be approved by October 1, 1995. In the event that it is not approved, the Department will be required to either operate under a continuing resolution, at current or reduced levels of funding, or absent a continuing resolution, to cease all non-excepted activities beginning October 1, 1995.
2. In the event of an absence of appropriations, we will need to shutdown non-excepted activities and furlough employees performing these activities. In the past, excepted activities that may be continued include those that protect life and property. In addition, employees performing non-excepted activities may be retained for as long as it takes to complete an orderly suspension of that activity (usually one-half day). For a more detailed list of excepted activities, we have attached some historical guidance, most notably an Office of Management and Budget (OMB) memorandum entitled Agency Operations in the Absence of Appropriations, dated November 17, 1981.
3. I am asking each of you to review your operations and identify the number of employees that should be excepted and those that are necessary to accomplish shutdown activities. Those identified to accomplish the shutdown would themselves be furloughed as soon as that work is accomplished. In reaching your decision, you should be guided by the attached guidance from OMB which includes the following criteria:

**Excepted Employees:**

Employees necessary for the protection of life and property, including medical care of inpatient and emergency outpatient care, protection of federal lands, buildings, equipment, and other property owned by the United States, law enforcement and criminal investigations, emergency and disaster assistance, and the protection of research property.

Page 2

Administration Heads, Assistant Secretaries, and Other Key Officials

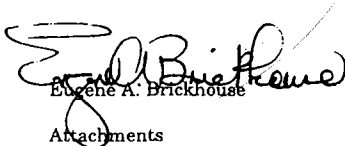
Shutdown Employees:

Those necessary for the orderly shutdown of non-excepted activities.

4. By August 25, 1995, please submit your shutdown plans for both Central Office and field activities to my office. We will be sharing your plans with the National Partnership Council prior to implementation. In addition, we may have to submit the Department's overall plan to OMB as we have done in the past. At a minimum, your plan should contain:

- (1) Excepted activities and number of employees necessary to carry out those activities;
- (2) Description of activities shutdown employees will perform, length of time needed, and number of employees necessary to carry out activities;
- (3) Procedures to notify customers of suspension/reduction of activities; and
- (4) Procedures to notify employees of their status relative to excepted or non-excepted activities.

5. To assist in this effort, I have also attached copies of the shutdown plans previously developed for your organization. If you have questions regarding the development of plans or furlough procedures, you or members of your staff may contact Richard Norman, Director, Employment and Training Service or Dennis Curley, Chief, Title 5 Staffing Division. Mr. Norman can be reached on 565-8804 and Mr. Curley on 565-8842.

  
Eugene A. Brickhouse  
Attachments



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

THE DIRECTOR

October 5, 1990

M-91-02

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES *Richard G. Darman*

FROM: Richard G. Darman

SUBJECT: Agency Operations in the Absence of  
Appropriations

The Continuing Resolution (CR) expires at midnight tonight, October 5, 1990. We have no indication yet whether Congress will act today and pass a CR. The President has stated that it is his intention not to sign a CR until there has been satisfactory Congressional progress on the budget. At this point, there has clearly not been satisfactory Congressional action. Therefore, beginning tomorrow morning (Saturday), October 6th, the head of each agency must be prepared to implement his or her existing plan for closing down operations funded by accounts that have not received appropriations.

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981), requires all agencies to maintain plans to deal with such an appropriations hiatus. Furthermore, the Attorney General's opinion dated January 16, 1981, supporting this bulletin, remains in effect. In general:

- o Employees of affected agencies performing non-excepted activities (as discussed in the Attorney General's opinion) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property.
- o Agencies may not permit voluntary performance of non-excepted services.

Implementation of this shutdown process will be particularly difficult because any lapse of appropriations will occur over a weekend (with a Monday holiday).

- o Weekend Employees -- Agency shutdown plans should be implemented for non-excepted weekend employees,

who should be instructed to report for their first scheduled work turn for the sole purpose of engaging in orderly shutdown activities. Excepted weekend employees should be instructed to report for work and to perform their excepted activities.

- o All Other Employees -- All regular employees performing non-excepted activities, as well as excepted employees, should be instructed to report for work on Tuesday, October 9th, as scheduled.

Over the weekend and during the day on Tuesday, we will provide further instructions, depending on the status of appropriations action, as follows:

- o Normal Operations: If a CR that suspends sequester is clearly likely to be enacted on Tuesday (or has been enacted over the weekend), agencies will be instructed to operate in a normal manner.
- o Shutdown: If no CR is likely to be enacted on Tuesday, we will issue instructions initiating a phase-down of activities for non-excepted employees. Such phase-down activities for non-excepted personnel, if called for, should be completed during the first three hours of the workday.
- o Sequester: If (on or before Tuesday) a CR is enacted that does not suspend sequester, you should begin implementing your sequester plan.

Please address any question to your OMB budget examiner(s), or to OMB Acting General Counsel Robert Damus (395-5044), or Associate General Counsel for Budget Rosalyn Rettman (395-5600).



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Appendix A2

Bulletin No. 80-14, Supplement No. 1

August 20, 1982

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Agency Operations in the Absence of Appropriations

1. Purpose. This supplement updates OMB Bulletin No. 80-14, dated August 28, 1980, and requires the submission of contingency plans for review by OMB. The purpose of the review is to assure adequate contingency planning and Government-wide compliance with the provisions of the Antideficiency Act.

2. Background. OMB Bulletin No. 80-14 instructed agencies to develop plans for an orderly shutdown in the event of a funding hiatus. It became necessary to carry out these plans during the November 1981 hiatus. In reviewing that experience and the operational plans in effect during the period immediately preceding enactment of the March 31, 1982 Continuing Resolution, certain difficulties were observed:

- some agencies have not fully complied with the requirements of OMB Bulletin 80-14, and do not have fully operational contingency plans;
- disparities appear to exist between some agencies as to the definition of activities necessary to protect life and property; and
- disparities appear to exist between some agencies as to the time necessary to complete the orderly shutdown of nonexcepted activities.

3. Actions required:

- a. Amend the date that appears in section 2 to January 16, 1981.
- b. Delete the last sentence of subsection 3.c.
- c. Add subsection 3.d. as shown in the attachment.

*David A. Stockman*

David A. Stockman  
Director

Attachment

## Attachment

Material to be added to  
OMB Bulletin No. 80-14,  
Section 3

d. Reporting. The plans required in subsection c will be submitted to OMB by September 15, 1982.

The following information will be provided with the plans:

(1) Estimated time to the nearest one-half day to complete the shutdown in accordance with the plan.

(2) Number of employees expected to be on-board before implementation of the plan.

(3) Total number of employees to be retained under the plan because (a) they are engaged in military, law enforcement, or direct health care activities, or (b) their compensation is financed by other than annual appropriations.

(4) Number of employees, not otherwise exempt, to be retained to protect life and property.

Within the guidance established by the Attorney General's opinion of January 16, 1981, and this bulletin, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by an agency should be addressed to OMB. All unresolved questions relative to the construction of the Antideficiency Act will be jointly referred to the Office of Legal Counsel of the Department of Justice.

If it is estimated that more than one-half day will be needed to complete the shutdown or that the number of employees to be retained to protect life and property will exceed five percent of the number of employees on board at the beginning of the hiatus less those exempt for reasons specified in item (3) above, agencies will submit policy statements and legal opinions supporting those estimates.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

November 17, 1981

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: David A. Stockman *DA*  
SUBJECT: Agency Operations in the Absence of Appropriations

Public Law 97-51, the Continuing Resolution enacted by the Congress on September 30, 1981 to provide for appropriations for all Executive and Judicial branch accounts, will expire on midnight Friday, November 20. No regular appropriations bills for Fiscal Year 1982 have been submitted to the President during the period of the Continuing Resolution, and the House of Representatives and Senate are presently considering widely divergent Second Continuing Resolutions. There is, therefore, a possibility that no appropriations will be enacted as of November 21.

Under the circumstances, you should begin orderly planning to deal with this possibility.

OMB Bulletin 80-14, dated August 28, 1980, requires all agencies to maintain contingency plans to deal with the eventuality of an appropriations hiatus. Additionally, the opinion of the Attorney General dated January 16, 1981, attached, remains in effect.

Examples of excepted activities were developed when the Executive Branch last faced the possibility of an appropriations hiatus, and were sent to agencies by former OMB Director James McIntyre on September 30, 1980. They are:

Beginning [November 21, 1981], agencies may continue activities otherwise authorized by law, those that protect life and property and those necessary to begin phasedown of other activities. Primary examples of activities agencies may continue are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
  - a. Medical care of inpatients and emergency outpatient care;

b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;

c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;

d. Border and coastal protection and surveillance;

e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;

f. Care of prisoners and other persons in the custody of the United States;

g. Law enforcement and criminal investigations;

h. Emergency and disaster assistance;

i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;

j. Activities that ensure production of power and maintenance of the power distribution system; and

k. Activities necessary to maintain protection of research property.

You should maintain the staff and support services necessary to continue these essential functions.

In addition, the following policies will be in effect in the event of a November 21 appropriations hiatus:

1. All employees performing non-expected activities defined by this memorandum and by the Attorney General's opinion of January 16, 1981, are permitted to perform no services other than those involved in the orderly suspension of agency operations.

2. With regard to non-expected agency activities and agency personnel performing them, particular attention should be paid to those provisions of the Antideficiency Act that do not permit agency acceptance of voluntary, i.e. non-expected services. Accordingly, in the event that the appropriations hiatus continues measurably beyond Monday, November 23, 1981, agency heads will be required to make determinations as to whether non-expected personnel have completed all phasedown tasks incident to the orderly suspension of agency operations. At such time, the services of those employees can no longer be accepted in the absence of appropriations.

3. This memorandum is principally directed towards the ability of agencies to obligate funds in the absence of appropriations. It should be made clear that, during a appropriations hiatus, funds may not be available to permit agency payment of obligations. All personnel performing excepted services, including activities incident to the orderly suspension of agency operations, should be assured that the United States will not contest its legal obligation to make payment for such services, even in the absence of appropriations.

4. Agencies are requested to report promptly to O&B staff and normally handle their budgets any major disruptions of activities or services that may or will imminently result from the absence of appropriations.

5. Within the guidance established by the Attorney General's opinion of January 16, 1981, and this memorandum, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by an agency should be addressed to O&B. All unresolved questions relative to the construction of the Antideficiency Act will be jointly referred to the Office of Legal Counsel of the Department of Justice.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Appendix A4

Bulletin No. 80-14

August 28, 1980

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations

1. Purpose and Coverage. This Bulletin provides policy guidance and instructions for actions to be taken by Executive Branch agencies when failure by the Congress to enact either regular appropriations, a continuing resolution, or needed supplementals results in interruption of fund availability. This Bulletin does not apply to specific appropriations action by the Congress to deny program funding. In the instance of partial funding interruptions, e.g., failure of the Congress to act on program supplementals, special procedures beyond those outlined in this Bulletin may be warranted. In such cases, OMB representatives responsible for the affected agency's budget estimates should be consulted.

2. Background. The Attorney General issued an opinion on April 25, 1980 that the language and legislative history of the Antideficiency Act (31 USC 665) unambiguously prohibits agency officials from incurring obligations in the absence of appropriations. The essential elements of the Attorney General's advice are that:

a. In the absence of new appropriations, Federal officers may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.

b. Under authority of the Antideficiency Act, Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but no funds may be disbursed.

c. Under its enforcement responsibilities, the Department of Justice will take actions to apply the criminal provisions of the Antideficiency Act in the future when violations of the Act are alleged under such circumstances.

3. Actions required. Agencies faced with funding interruptions must take steps to forestall interruptions in operations and assure that they are in a position to limit their activities to those directly related to orderly shutdown of the agency.

a. Reallocation of funds prior to shutdown. Prior to initiation of orderly shutdown activities, agency heads will limit their operations to minimum essential activities and will reallocate to the extent permitted by law all available funds in order to forestall the fund interruption date as long as possible. Reallocation of funds will be made subject to the following requirements:

(1) Reallocation below the appropriation and fund account level will be accomplished by telephonic revision to allotments and suballotments (such revisions will be documented and immediately reflected in formal written changes to the regular allotment/suballotment documents).

(2) Agencies that have specific statutory authority to reallocate and transfer funds between appropriation and/or fund accounts will effect the transfers in accordance with current standard fiscal procedures. Such transfers generally will be effected on Standard Form (SF) 1151, "Nonexpenditure Transfer of Funds" (see OMB Circular No. A-11, section 21.2, for a description of when expenditure transfers might be required). This Bulletin does not convey new authority to transfer funds.

(3) For this purpose adjustment to amounts contained in OMB apportionments may be made without submission of a reapportionment request.

b. Orderly shutdown activities. When all available funds, including reallocated/reallocated funds, are exhausted, orderly shutdown activities must begin. Each agency head must determine the specific actions that will be taken; however, all actions must contribute to orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Such actions should be accomplished in a way that will facilitate reactivation when funds are made available. Agency heads will notify OMB, OPM, Treasury, and GSA immediately when shutdown activities are being initiated. These central agencies will be responsible for notifying their own regional offices, except as noted in paragraph (3).

(1) Appropriations and funds. Agency heads will limit obligations incurred to those needed to maintain the minimum level of essential activities necessary to protect life and property; to process the necessary personnel actions; to process the personnel payroll for the periods prior to fund interruption; and to provide for orderly transfer of custody of property and records to the General Services Administration (GSA) and the Office of Personnel Management (OPM) for disposition.

(2) Personnel and personnel records. Necessary personnel actions will be taken to release employees in accordance with applicable law and Office of Personnel Management's regulations. Preparation of employee notices of furlough and processing of personnel and pay records in connection with furlough actions are essential shutdown activities. Agencies should plan for these functions to be performed by employees who are retained for orderly termination of agency activities, as long as those employees are available. As soon as agencies determine the date after which they will no longer be able to maintain custody of personnel records, they should notify the Office of Personnel Management to arrange for orderly transfer of custody of the personnel records to OPM and GSA, jointly, for caretaking and protection of the records. If necessary to protect the interests of individual employees during the period when all employees of the agencies are on furlough, OPM will provide access to the appropriate personnel records to retrieve information and/or process personnel actions, e.g., separation-transfer of an employee who secures employment in another agency. Guidance for planning such actions and relevant questions and answers as to employees' benefits will be provided separately by OPM.

(3) Property and nonpersonnel records. Inventories of property and records will be made to assure protection of the Government's interests and the claims of affected private entities and individuals (including vendors and beneficiaries of Federal programs). Upon determination that agency funds are no longer available, agency officials should contact the appropriate Regional Administrators, General Services Administration, for assistance in determining the disposition of agency records, real and personal property, and outstanding requisitions, contracts, grants and related items. Detailed guidance on such matters are contained in:

- 41 CFR 101-11.4; Dispositions of records.
- 41 CFR 101-43 and 101-47; Disposition of personal property and real property.

- FPMR 101-36.5, 101-37.203(c), and 101-37.307-1; Dispositions of automatic data processing, communications, and telephone equipment.
- GSA motor pool accounting and record system operations guide; Disposition of motor vehicles.

The transfer to the General Services Administration of property and records shall not be made until 30 days have elapsed from the start of shutdown activities and then only after a determination is made that the funding hiatus will continue indefinitely.

c. Planning. Agency heads should develop plans for an orderly shutdown that reflect the policy and guidance provided in this Bulletin. Such plans necessarily will be tailored to each agency's needs in recognition of the unique nature of its funding sources, missions, and authorities. While every agency should have a plan, the scope and detail of the plan should be commensurate with the likelihood that shutdown will be necessary and with the complexity of shutting down the agency.

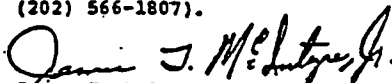
4. Effective dates. The instructions in this Bulletin are effective immediately and remain in effect until rescinded.

5. Inquiries. Budgetary questions should be directed to the OMB representatives responsible for review of each agency's budget estimates.

Fiscal procedures questions should be directed to the Division of Government Accounts and Reports, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex #1, Washington, D.C. 20226 (Telephone: (202) 566-5844).

Agency officials may obtain additional information and technical assistance on personnel matters by contacting their agency officer at the Office of Personnel Management.

Property and nonpersonnel records disposition questions should be directed to Office of Plans, Programs, and Financial Management, General Services Administration, Washington, D.C. (Telephone: (202) 566-1807).

  
James T. McIntyre, Jr.  
Director

## Memorandum

DATE: September 19, 1995  
TO: VA Field Human Resource Management Officers  
FROM: Director, Employment and Training Service (054)  
RE: Lapse of Appropriation Furlough Guidance

1) Lapse of Appropriation furloughs present unique circumstances regarding suspension of standard adverse action notice periods to employees, yet do not lessen management's desire to keep employees informed regarding the possibility of furlough, as well as pay, benefit and other issues that may affect them. This memo transmits to you information to help you and management prepare for and implement such furloughs should they be necessary.

2) The diskette that contains this *Microsoft* memo (file name: Lapsemem.doc) also contains two other files, Q&As and a master furlough notice with attachments and instructions.

3) Lapsed appropriation furlough Q&As are found in file lapseq&a.doc. This file can be used as is for HRM staff, management and employees, or can be tailored to fit the intended audience.

4) The furlough notice file is lapsefur.doc. Included in this file are the following:

- 1) master notice of furlough,
- 2) attachments A-D, appeal rights.
- 3) instructions for handling notices, and
- 4) instructions and guidance for distributing notices to employees.

5) Although it is entirely possible that an interim budget solution may be adopted by October 1, this information is provided for your use in planning for the possible shutdown, either October 1 or at the end of any continuing resolution that may be temporarily adopted by the legislative and executive branches.

Richard L. Norman

To:

Subject: Notification of Furlough not to exceed 30 Calendar Days

1. This is to notify you that a decision has been made to furlough you without pay effective October 1, 1995 for a period not to exceed 30 calendar days for the following reason:

Since neither an appropriation for Fiscal Year 1996 nor a continuing resolution extending the Fiscal Year 1995 appropriation has been enacted, no further financial obligations may be incurred by the Department, except for those related to the orderly suspension of operations or performance of excepted activities, such as work necessary for national security, preservation of life, or protection of government property. Because your services are not needed for the orderly suspension of operations and you are not engaged in one of the excepted functions, it is necessary to furlough you for the period specified above.

2. This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore no advance notification was possible. The customary 30 day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752. 404 (d) (2).

3. If employees are being retained in your competitive level, they are required for orderly suspension of Department operations or they are performing an excepted activity.

4. During the furlough period, you will be in a non-pay, non-duty status. Also during the furlough, you will not be permitted to serve as an unpaid volunteer and must remain away from your workplace until VA has authority to pay your salary.

5. It is your responsibility to listen to public broadcasts. When you hear that a continuing resolution or a FY 96 appropriation for VA has been approved, you will be expected to return to work at the beginning of your next regularly scheduled tour of duty.

6. The furlough will have no effect on your entitlement to life and health insurance. Neither will it change your service computation date.

7. Any appeal rights to which you may be entitled are provided in the attachment to this notice. If you have any questions regarding your appeal rights or any other matters related to this letter, you should contact the Human Resources Management Service/Division.

---

Deciding Official

---

Date

I acknowledge receipt of this decision letter.

---

Employee's signature

---

Date

**ATTACHMENT TO NOTICE OF DECISION TO FURLOUGH(Appeal Rights-Attachment A)**

You are entitled to appeal to the Merit systems Protection Board. Appeals to the Merit Systems Protection Board (MSPB) must be in writing and must be filed with the Board no later than 30 calendar days after the effective date of this action (i.e. the first day of furlough). Any appeal to the Board must be filed either by mail or in person. A copy of the appeal form is enclosed. You may review the MSPB's regulations in \_\_\_\_\_. You may be represented by an attorney or other representative of your choice. Following is the address of the MSPB Regional Office having jurisdiction as indicated:

**ATTACHMENT TO NOTICE OF DECISION TO FURLOUGH (Appeal Rights-Attachment B)**

You have the right to appeal this action to the appropriate decision official, in accordance with VA grievance procedures, at any time after you receive this decision but not later than 15 calendar days after the effective date of this action (i.e. the first day of furlough). The appeal must be in writing and set forth the specific reasons, facts, and circumstances which make you believe that the action taken was unwarranted.

In an appeal, you have the right to a hearing before an examiner under the provisions of MP-5, Part, Chapter 771. To obtain a hearing, you must request it in writing in your appeal. If you do not indicate in writing that you want a hearing, your case will be decided on the basis of the record. At the hearing, if one is held, you may be represented by a person of your choice and you may present evidence and witnesses who are willing to testify. The Human Resources Management Office, upon your request, will advise you further regarding the procedures for filing and processing grievances.

**ATTACHMENT TO NOTICE OF DECISION TO FURLOUGH (APPEAL RIGHTS-  
ATTACHMENT C)**

You are entitled to appeal this action to the Merit Systems Protection Board (MSPB), or under the negotiated grievance procedure, but not both. You shall be deemed to have exercised your option to appeal this action to the MSPB, or under the negotiated grievance procedure at such time as you timely initiate action to appeal to the Board or timely file a grievance in writing under the negotiated grievance procedure. If you elect to file a grievance under the negotiated grievance procedure, you will be entitled to union representation as provided for in the negotiated agreement.

If you appeal to the MSPB, your appeal must be in writing and must be filed with the Board no later than 30 calendar days after the effective date of this action (i.e. the first day of furlough). Any appeal to the Board must be filed either by mail or in person. A copy of the appeal form is enclosed. You may review the MSPB's regulations in \_\_\_\_\_. You may be represented by an attorney or other representative of your choice. Following is the address of the MSPB Regional Office having jurisdiction as indicated:

**ATTACHMENT TO NOTICE OF DECISION TO FURLOUGH (Appeals Rights-  
Attachment D)**

**As a temporary employee or one who is serving a trial or probationary period, you have no appeal rights on the furlough.**

INSTRUCTIONS FOR DISTRIBUTING FURLOUGH  
SHUTDOWN NOTICES TO EMPLOYEES

1. Shutdowns due to lapse of appropriations are considered to be "emergency" equivalent situations because they cannot be anticipated with certainty. Authorization from OMB to implement such furloughs usually occurs only after all efforts to avoid shutdown have taken place.
2. Since shutdown is a last resort, the reason for furlough only exists at the last minute, hence the suspension of full adverse action procedures, especially the 30-day notice, and the subsequent need to distribute notices quickly while employees are still on the job.
3. Furlough notices are not to be distributed to affected employees until the station receives VACO authorization. This authorization will most likely come with short advance notice from OMB, perhaps less than a day before furloughs are to begin.
4. Complete distribution of notices to all employees, present and absent on the last workday, should be incorporated into plans for orderly shutdown of non excepted activities.
5. Each station should assess the lead time necessary to mass produce, address, and distribute appropriate notices to all affected employees on station on any given day, and plan accordingly.
6. Appropriate plans also are needed to ensure quick receipt of notices by those employees not at work when the furlough begins. A means of securing home addresses prior to the furlough is needed.
7. A means of accounting for all employees furloughed and notified will be necessary at the local level. All organizational units distributing notices should have persons accountable for quickly providing information (also see INSTRUCTIONS FOR HANDLING FURLOUGH DECISION NOTICES) of this type to the HRM Office or other designated office as furloughed employees begin departing the work site on their last work day.
8. Consistent with the type of activities/occupations and numbers of employees already identified by organizations as excepted from shutdown and reported to OMB, confirmation of information of this type is often requested by OMB and/or other oversight agencies, perhaps within several hours of the beginning of the shutdown.

**INSTRUCTIONS FOR HANDLING FURLOUGH DECISION NOTICES**  
Lapse of Appropriations

1. The employee's name should be typed on the notice.
2. The Human Resources Management Office should complete the address for the Merit Systems Protection Board Office having jurisdiction in their area, in the appropriate spaces in the Attachment.
3. A copy of the MSPB appeal form should be attached to the notice and Personnel Offices should fill in the room number where the MSPB regulations can be reviewed.
4. The employee should be given two copies of the decision letter to sign. The employee will retain the original and the copy should be retained by the deciding official. If an employee refuses to sign, the supervisor should document the employee's refusal on the copy.
5. NOTE: Public Law 101-376, dated August 1990, has expanded Merit Systems Protection Board Appeal rights coverage to the following two categories of excepted service employee:

Individual in the excepted service, other than preference eligibles, who have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less,

Individuals in the excepted service, other than preference eligibles, who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service.

This new guidance has been incorporated in the appeal right attachment of the furlough decision notice.

6. A standard Form 8 (SF-8), Notice to Federal Employees About Unemployment Insurance, must also be given to each employee who is to be furloughed.

7. Personnel Service/Divisions or supervisors should attach to the decision letter, the appropriate appeal rights attachment based on the employee's status as follows:

Attachment A Employees who have completed a probationary or trial period, or 1 year of continuous service in the competitive service under other than a temporary appointment;

Preference eligibles in the excepted service who have completed 1 year of current continuous service in the same or similar positions;

Individuals in the excepted service (other than a preference eligible) who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service;

Individuals in the excepted service (other than a preference eligible) who have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less.

Senior Executive Service career employees.

Attachment B Employees in the excepted service (other than a preference eligible) who have completed more than 1 year (but less than 2 years) of current continuous service in the same or similar positions.

Attachment C Employees in the competitive service who have completed a probationary or trial period, or one year of continuous service under other than a temporary appointment, and who are in a bargaining unit covered by a negotiated grievance procedure.

Attachment D Employees on temporary appointments and those serving probationary or trial periods.

**FURLOUGH DUE TO ABSENCE OF APPROPRIATIONS**  
**[Furlough Under Adverse Actions Procedures (General)]**

This is a discussion of "shutdown" or "emergency" furloughs. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities which are not excepted by OMB standards. In many cases, the agency will have very little lead time to plan for the furlough, making it an "emergency" furlough. A good example of a "shutdown" or "emergency" furlough is if there are no fiscal year 1996 funds appropriated for an agency by October 1, 1995.

1. Q. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons. For most employees, a furlough of 30 calendar days or less is covered under 5 CFR part 752, adverse action procedures.

2. Q. What can agencies do to prepare for the likelihood that there may be no appropriations passed by the beginning of the new fiscal year?

A. OPM recommends agencies take the following steps:

- o Communicate with employees and their representatives regarding agency plans if it becomes necessary to effect an orderly suspension of agency operations.
- o Prepare draft "emergency" furlough decision notices and plans for distribution to employees to the extent possible within the limited time available.
- o Determine which positions are excepted under the guidelines established by the Office of Management and Budget (OMB). See Appendix A for copies of OMB bulletins and memoranda.

3. Q. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d) (2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring curtailment of activities.

OPM's position that this regulation applied to lapsed appropriations was upheld by the Federal Circuit in *Horne v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987). Similarly, under 5 CFR 359.806 (a), the full notice period for career SES appointees may be shortened or waived in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities.

4. Q. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. Yes. While an employee must ultimately receive a written notice of decision

to furlough, it is not required that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

5. Q. What information should be included in the notice of decision when no advance notice is issued?
- A. The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB guidelines, we recommend a statement such as the following:

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by the Office of Management and Budget.

The notice must include a statement of applicable appeal and grievance rights. Agencies are reminded that adverse action coverage for excepted service employees was substantially expanded by the Civil Service Due Process Amendments of 1990, (P.L. 101-376). If a copy of the MSPB appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

6. Q. During a furlough due to an absence of appropriations, may management alternate the employees performing excepted activities?
- A. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by MSPB on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In OPM, 22 FLRA No. 29, the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 7106 (b)(1) "appropriate arrangement." That decision was affirmed by the D.C. Circuit in an unpublished opinion: OPM v. FLRA, 829 F.2d 191 (1987).

7. Q. In addition to statutory and regulatory procedural requirements, what additional forms of communication should an agency consider in effecting a furlough?
- A. Considering the uncertain and changing circumstances surrounding furlough, agencies should make efforts toward assuring that employees are provided with up-to-date and accurate information as warranted. This may be done through effective union-management communication, employee briefings, periodic bulletins, newsletters or other means available to agencies.
8. Q. How should the decision letter be framed if the agency has not set a specific number of furlough days in the proposal?
- A. While it is desirable when possible to inform the affected employee of a specific number of days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible, if they choose to appeal.

## Employee Coverage and Procedural Requirements

9. Q. What procedures are applicable for probationers, employees under temporary limited appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, and others not covered by 5 U.S.C. chapter 75?
- A. There are no mandated procedures; however, agencies should ensure that all procedures required by negotiated agreements or internal personnel policies are followed.
10. Q. What about SES appointees?
- A. Furloughs of SES career appointees (other than reemployed annuitants) are covered under 5 U.S.C. 3595a and subpart H of 5 CFR part 359. The regulations provide only for a single 30-calendar day advance written notice, which must tell the appointee: the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; for a probationer, the effect (if any) on the duration of the probationary period; and the appointee's appeal rights to the MSPB, including the time limit for the appeal and the MSPB office to which it should be sent. A career appointee may appeal a furlough of any length. Competitive procedures are required to select career appointees for any furlough of more than 30 calendar days (or 22 workdays). An agency may furlough an SES noncareer or limited appointee, or a reemployed annuitant holding a career appointment, under agency designated procedures.
11. Q. Are individuals appointed by the President subject to furlough?
- A. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 5301 and attendant regulations governing leave in the Federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he may return part of his salary to his employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his entire salary is recorded for tax purposes. The following exception must be noted: former career SES appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392 (c), are subject to furlough at the discretion of the agency.
12. Q. What about persons working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?
- A. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the Federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:
- o Personnel from non-Federal organizations on appointments to the

Federal government are subject to furlough in the same manner as other employees.

- o Personnel on detail to Federal agencies from non-Federal organizations may continue working, provided that the non-Federal organizations pay the total costs of the detail.
  - o Personnel on detail to Federal agencies from non-Federal organizations which share part of the costs of detail may continue to work if the Federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
  - o Personnel on detail to Federal agencies from non-Federal organizations which do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.
13. Q. Would employees who are detailed or assigned outside the agency during part, or the entire period, of furlough be subject to furlough?
- A. Employees on a reimbursable detail from the agency would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Agencies may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-Federal organizations who are on leave without pay from their Federal positions may continue working.

#### Employment during Furlough

14. Q. May employees take other jobs while on furlough?
- A. Even while on furlough, an individual is an employee of the Government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. Agencies also have varying supplemental rules regarding the requirement for prior approval of outside employment, and some prohibit certain types of outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their own agencies ethics official to learn if there are any agency-specific supplemental rules governing the employee.
- Except for conflict of interest restrictions (which preclude outside employment in a non-government facility that contracts with a Federal agency, and other incompatible activities as well as those which give the appearance thereof) or Hatch Act restrictions (which deal with political activities of Federal employees), employees may accept employment outside the Federal service while on furlough. Employees must obtain agency approval of any such outside employment. Furloughed employees may, absent any agency restrictions, accept temporary appointments with other Federal agencies during furlough.
15. Q. What happens to employees' benefits (e.g., retirement, health benefits, life insurance, leave) if they receive temporary appointments in another agency while furloughed?
- A. The leave should be transferred as if the employees had been transferred (see Comp. Gen. opinion B-167975, September 1, 1970). Retirement, health benefits, life insurance, and leave should be handled as if the employees had

been transferred.

16. Q. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Service Credit for Various Purposes

17. Q. Is furlough or leave without pay (LMOP) a break in service?

A. No, either merely places employees in a nonpay status.

18. Q. To what extent does nonpay status affect civil service benefits and programs?

A. Nonpay status (which includes furlough, LMOP, absence without leave, and suspension) is credited as follows:

- o For career tenure, the first 30 calendar days of each nonpay period is creditable service.
- o For completion of probation, an aggregate of 22 workdays in a nonpay status is creditable service.
- o For X-118 qualification standards, there is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- o For time-in-grade requirements, nonpay status is creditable service.
- o For retirement purposes, an aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.
- o For health benefits, enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303 (e)). The government contribution continues while employees are in a nonpay status. The employee can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld from his or her pay upon returning to duty.
- o For life insurance, coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401 (c)) or to the agency (5 CFR 870.401 (d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- o For within-grade increases, an aggregate of 2 workweeks nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to

steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406 (b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417 (b)).

- o For annual and sick leave, when an employee accumulates 80 hours of nonpay status, his or her annual and sick leave credits are reduced by an amount equal to the amount of leave the employee earns during that pay period (5 CFR 630.208). For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of 6 months nonpay status in a calendar year (5 U.S.C. 6303 (a) and 8332 (f)).
- o For reduction in force, an aggregate of 6 months nonpay status in a year is creditable service.
- o For severance pay, nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595 (b) (1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the computation of an employee's severance pay fund under 5 U.S.C. 5595 (c) (1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service. (This is the same rule used in crediting nonpay status time as "service" in determining annual leave accrual rates.)
- o For the Thrift Savings Plan, agencies should refer to the Thrift Savings Plan Bulletin for Agency TSP Representatives, No. 95-15, dated May 12, 1995. For additional information, the agency representative should contact the Federal Retirement Thrift Investment Board at (202) 942-1460.
- o For military duty or workers' compensation, nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

#### Retirement

19. Q. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?
  - A. Generally there will be no effect on the high-3 average unless the furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.
20. Q. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?
  - A. Yes.
21. Q. What happens if employees cancel FEHB coverage while in a nonpay status in order to avoid the expense?
  - A. Employees are cautioned not to cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status. Normally, an employee must wait for an FEHB open season to re-enroll. Further, cancellation of FEHB coverage may affect an employee's right to carry such coverage into

retirement or while in receipt of workers' compensation.

#### Holidays

22. Q. If employees are furloughed on the last workday before a holiday or the first workday after a holiday (but not on both days), will they be paid for the holiday?

A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (45 Comp. Gen. 291 (1965)) (Note: A holiday should not be the first or last day of the period covered by a furlough.)

23. Q. If employees are furloughed on the last workday before a holiday and the first workday after a holiday, will they be paid for the holiday?

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.)

#### Requests for Leave during Furlough

24. Q. If employees request annual, sick, court, military leave, or leave for bone marrow or organ donation after receiving a notice proposing specific days of furlough, can the requests be denied for those days that coincide with the dates of furlough? If an agency has approved requests for these categories of leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?

A. The answer to both questions is yes. If employees request leave for a day designated as a furlough day, the agency is not required to grant leave. Further, if employees have been granted leave for a day subsequently designated as a furlough day, that leave is automatically canceled because the necessity to furlough supersedes leave rights. To avoid confusion, it is advisable to state in the furlough notice that any annual, sick, court, military leave, or leave for bone marrow or organ donation approved for use on the furlough days is canceled if this is the intent of agency management. Furlough days are nonworkdays. Annual, sick, court leave, and leave for bone marrow or organ donation cannot be granted on a nonworkday. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty. Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.

25. Q. May employees performing excepted activities during the period of furlough be granted sick or annual leave?

A. OPM says this is technically possible. All positions in VA that were determined to be excepted were so identified because performance of those duties was vital to continued provision or direct support of health care services and protection of life and property. VA has no Department-wide policy covering this situation, but granting emergency sick leave to an individual performing an excepted activity could be done at the discretion of local management. However, granting annual leave to an employee in a position identified as necessary to carrying out the Department's mission should be avoided since the position was excepted on the basis of its criticality to performance of mission.

Management should bear in mind that under anti-deficiency spending regulations, funds may be expended only for approved excepted activities. Payments for annual leave do not seem to fit this criteria.

26. Q. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during furlough days, do the furlough days count towards the 12-week entitlement to FMLA leave?

A. No. Employee cannot take leave (either paid or unpaid) under the FMLA on days that coincide with the dates of furlough. Therefore, the furlough days cannot be counted towards the 12-week entitlement to FMLA leave.

#### Leave Without Pay (LWOP)

27. Q. If employees are on approved LWOP, can the LWOP be terminated and the employees furloughed?

A. Yes. The LWOP can be terminated, but if there is no expectation that the employees may return to duty on the proposed furlough days, it is unnecessary to cancel the LWOP, since there is no work or funds involved. However, if the employees may potentially return to duty during the approved LWOP, the agency may propose to furlough on the days of approved LWOP and cancel the LWOP.

#### Continuation of Pay (COP)

28. Q. If employees are receiving COP due to job-related injuries, can the COP be terminated or interrupted by furlough?

A. No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

#### Injury While on Furlough or LWOP

29. Q. If employees are injured while on furlough or LWOP, are they eligible for workers' compensation?

A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose.

#### Unemployment Compensation

30. Q. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Agencies or employees should submit their questions to the appropriate State office.

#### Documentation of Furlough

31. Q. How is time on furlough and leave without pay documented?

A. An SF-50, "Notification of Personnel Action," must be prepared for each individual subject to furlough (or a list form of notification for a group of employees who are to be furloughed on the same day or days each pay period). A return-to-duty SF-50 is necessary only for return from a consecutive furlough, not for a return from a discontinuous furlough. (See

Chapters 15 and 16 of The Guide to Processing Personnel Actions.)

If the specific furlough dates are known when a 471/Furlough action is prepared, these dates must be shown in the remarks section of the 471/Furlough action document (SF-50, or list form). If specific dates are not known, then agencies must prepare an 002/Correction action (SF-50) to the 471/Furlough action (or a list form of notification for a group of employees similarly situated) with remarks documenting the total number of days or hours of the furlough when those dates become known.

When the total number of days for a 472/Furlough NTE is increased, a 772/Ext of Furlough NTE (date) must be prepared. For new calendar periods of furlough, a new furlough action must be prepared. For all other changes in the dates on which a furlough will occur, an 002/Correction action must be prepared.

Agencies are reminded that for members and former members of the uniformed services who are subject to the "pay cap" reporting procedures, a copy of the furlough notice, and of the return to duty notice when one is issued, must be sent to the appropriate uniformed service finance center (addresses of the centers are in Chapter 8 of The Guide to Processing Personnel Actions), since days in nonpay status will affect the person's retirement pay. When an SF-50 or a list form of the notice is issued to document a furlough, the copy of the notice which is sent to the pay center must have the employee's SSN and DOB and dates of furlough added to it to ensure proper adjustment of his/her retirement pay.

Note: When using the list form of notification in any of the instances cited above, agencies must be aware of their obligation, under the Privacy Act, to ensure that only identifying information pertaining to the individual employee is placed in the Official Personnel Folder (OPF) or is shown on the copy given to the employee. Therefore, in using the list form, all information pertinent to other employees must be deleted before a copy of the list form may be placed in the OPF or distributed to the affected employees.

#### Labor Management Relations Implications

The following section provides general information about agency bargaining obligations during a time of reduced budgets. Officials responsible for preparing for furloughs, reductions in force, hiring and promotion freezes, or the like, should work closely with the agency's labor relations staff.

Agencies should work with their partnership councils in planning and implementing changes required by reduced budgets. Many of the actions agencies may find necessary are protected by the management rights section of the Federal Labor Relations Statute. However, this should not prevent agencies and unions from working together to meet the challenge of budget cuts with the least possible disruption. Employees and their representatives have an important stake in this area and their suggestions can be valuable.

32. Q. What is an agency's obligation to bargain when it becomes necessary to furlough employees?
  - A. The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. 7106 (a)(2)(A). However, the agency must bargain over the impact and implementation of its decision and over appropriate arrangements for employees affected by the furlough, unless the matter of furloughs is already "covered by" the agreement. See, in this connection, 47 FLRA Nos. 96, 99 and 114, and other cases in which the Authority has applied its "covered by" doctrine to determine whether the

agreement provisions relieve the agency of any duty to bargain on impact and implementation on this matter. If in doubt, prudence dictates that the agency give adequate notice and bargain on impact and implementation rather than run the risk of being ordered to pay backpay to furloughed employees as a remedy for committing a refusal-to-bargain unfair labor practice.

33. Q. In the event of a lapse of appropriations necessitating a "shutdown" furlough, what is an agency's obligation to bargain?

A. Agencies still have a duty to notify the union and bargain upon request on whatever negotiable impact and implementation proposals the union may submit. Because the agency must act by a date certain, whatever bargaining that takes place must be accomplished in the little time available before action is necessary. If agreement isn't reached in the time allowed, the agency should tell the union what actions it will take. Although the union may try to invoke the services of the Impasses Panel, it is unlikely that, in the circumstances posed by this question, the Panel will have time to get involved. But whether or not FSIP gets involved, the agency can justify its actions--as FLRA put it in Treasury, 18 FLRA No. 61--where "consistent with the necessary functioning of the agency."

Some of the urgency could be reduced if the agency, as it approaches the lapse of its appropriation, were to notify the union of the actions it plans to take were certain scenarios to take place and ask the union for its views and suggestions. That is, nothing prevents the parties from bargaining in advance of a looming crisis so as to eliminate any need for bargaining when the crisis actually occurs. FLRA has frequently held that there is no need to engage in I&I bargaining on matters already "covered by" the agreement. See the cases mentioned in answer 48.

34. Q. What steps should an agency take to meet its obligation to bargain?

A. Under the labor-management statute, the agency must give the union "adequate" notice of its intent to furlough employees who are represented by the union. "Adequate" is not defined and the Federal Labor Relations Authority determines what is adequate notice based on the nature of the action taken by the agency and amount of time it judges adequate to bargain. These statutory notice requirements may have been augmented or modified by any negotiated agreements.

35. Q. What are the implications if an agency furloughs employees before it gives the union timely notice and meets its bargaining obligations?

A. It is an unfair labor practice to refuse to negotiate in good faith. If the Federal Labor Relations Authority finds that the agency engaged in an unfair labor practice it may order the agency to renegotiate an agreement with retroactive effect and may require reinstatement of affected employees with backpay.

36. Q. What is the effect of outside directives on the obligation to bargain or to continue to abide by existing agreement provisions?

A. This depends on the nature of the outside directive. Any agreement must conform to existing law and any laws enacted during the life of the agreement. The FLRA has held that, in certain situations, Presidential Executive Orders are to be considered "applicable law." (Bureau of the Public Debt, 42 FLRA No. 92 (1991)). Thus any provisions imposed by an Executive Order issued by the President would preempt any agreement provisions or bargaining proposals. In addition, any OMB directive determined by the FLRA to be an "applicable law," and

not reversed by a court of appeals, would preempt existing contract provisions that are contrary to the directive.

With respect to other kinds of directives, it is an unfair labor practice for an agency "to enforce any rule or regulation . . . which is in conflict with any collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed." This means that any OMB directive would not preempt existing agreement provisions. However, because agreements must conform to Governmentwide regulations, a directive from OMB, or any agency, that is binding on other agencies would limit bargaining over new agreement provisions.

Agency-wide regulations or directives do not supersede existing agreement provisions and cannot be enforced until the agreement expires. Also, they do not limit negotiations unless the agency can support a "compelling need" for the regulations. The Authority rarely finds a compelling need for an agency-wide regulation.

SUPPLEMENTAL QUESTIONS DEVELOPED BY VACO/COHRMS:9/18/95  
(Revised 9/26/95)

Q. What are the features of Unemployment Compensation for Federal Employees (UCFE):

- federal employees are covered for Unemployment Insurance (UI) under the UCFE.
- (1) The UCFE program is administered by the individual states, and the UCFE benefits are generally determined and paid under the UI law of the State in which the Federal employee worked.
- (2) UCFE program claims would be filed with the State agency that administers the UI program in that State.
- (3) State laws provide for the payment of partial weekly amounts when individuals are employed less than full time during a week.
- (4) State laws vary but in most cases, an individual in furlough status for 1 or 2 days during a week would not be eligible for a partial payment for that week.
- (5) Individuals at grade levels of 9 step 5 and higher would need to be on furlough status for at least 4 days per week to receive a partial payment for the week.
- (6) Most State laws provide that the first week of eligibility is a non-paid "waiting week" (e.g., DC and VA. MD has no waiting week) and payments would not actually start until the second week of eligibility in States with a "waiting week."

Q. When may VACO employees apply for unemployment assistance?

A. Employees may apply immediately in the District of Columbia and in Virginia; however, no benefits will be allowed until the employee has been off the job for one week (5 work days). In Maryland, applications may be submitted immediately, with no waiting period.

Q. Where should employees file for unemployment assistance?

A. Payment is made by the state where the work site is located, and normally employees should file in that state. If, for convenience sake, filing is done in another area, the location of the work site should be noted. Rates of unemployment assistance also vary from state to state; in general, DC pays one of the higher rates of unemployment assistance.

Q. If unemployment benefits are paid and, at a later date, Congress determines to pay Federal employees, is there an obligation to pay back funds to the Unemployment Office?

A. Yes, a call to the District of Columbia revealed that in cases where there has been payment and later salary reimbursement for the same period, an employee would be in an overpayment situation. In this situation, it is recommended that employees arrange to direct repayment to the Unemployment Office.

Q. How will time and attendance information be recorded for employees in excepted activities during the furlough?

A. During the furlough, time and attendance information will not be entered in the timekeeping systems, i.e., OLDE or ETA. Each organization may designate an excepted employee to keep track of time and attendance information for employees in the excepted activity or may instruct excepted employees to keep track of their own time and attendance information. Once activities that were suspended due to lack of appropriation funding resume, designated timekeepers will enter time and attendance information for employees who were excepted during the furlough.

Q. When will excepted employees receive pay for work during the furlough period?

A. Payroll processing will not occur until an appropriation or other authorization to operate is approved. Once operation resumes, pay for excepted employees will be processed as soon as possible.

Will furloughed employees receive retroactive pay for the furloughed period?

A. Although employees were compensated in the past for furloughed periods, there are no indications these provisions will apply in this particular case. Congressional mandates and other legislative requirements will determine if furloughed employees will be compensated.

1. What happens to my TSP account? Can I still contribute? Will the VA pay into my account? Can I borrow from my account?

.. By law, employee contributions to TSP must be made through payroll deductions and must be determined by using the pay the employee earned for the pay period. Therefore, if you are in a nonpay status for one or more pay periods (that is, you receive no basic pay for the pay period), you *cannot* contribute to your TSP account. Also, if you are a FERS employee and you are in a nonpay status for one or more pay periods, you will *not* receive VA contributions (1%) or VA matching contributions. (TSP Bulletin 95-15, 5/12/95)

(1) You may make interfund transfers while on furlough.

(2) You cannot receive a TSP loan if you are in a non-pay status.

(3) If you are in a nonpay status and have a TSP loan *and* your pay for any pay period is insufficient to cover your loan repayment, contact the Payroll Division, 565-8403.

(4) TSP accounts can be withdrawn only if you separate from Federal service. Consequently, you *cannot* withdraw your account while you are in nonpay status.

1. Can the employee share of the TSP contribution be adjusted should an employee be in a non-pay status for an entire pay period?

.. An employee cannot make up missed TSP contributions when he/she returns to pay status. An employee may change the amount withheld only during Open Season. The next TSP Open Season is scheduled for November 15, 1995 through January 31, 1996, with changes to take effect in January, 1996.

2. What happens to my health insurance while I'm on furlough?

.. If you are in a nonpay status, your health insurance continues for up to 12 months. You are still responsible for payment of your portion of the health benefits premium. If you are in a nonpay status for one pay period, Payroll will adjust the health benefits premium upon your return to a pay status.

Will the computer system be available to excepted employees who are in the office?

.. Yes. The nationwide computer system will be in operation. The Austin Help Desk will be open to assist with problems; the number is 512-326-6780. In VACO the network will be in operation and IRM staff will be available through the Austin Help Desk to assist with any problems.



## THRIFT SAVINGS PLAN FACT SHEET

### Effect of Nonpay Status on Thrift Savings Plan Participation

This Fact Sheet is for employees who are placed in nonpay status (for example, furlough or leave without pay) for one or more pay periods. It explains the effect of the nonpay status on an employee's Thrift Savings Plan (TSP) participation.

This Fact Sheet does not apply to employees who are in nonpay status performing an assignment with a state or local government agency under the provisions of the Intergovernmental Personnel Act (IPA) or to employees who are in nonpay status serving as full-time officers or employees of a union. If you are in nonpay status for one of these reasons, see your servicing personnel office for information about your TSP participation.

#### ***Can I contribute to my TSP account if I am in nonpay status?***

By law, employee contributions to TSP accounts must be made through payroll deductions and must be determined by using the basic pay the employee earned for the pay period. Consequently, if you are in nonpay status for one or more pay periods (that is, you receive no basic pay for the pay period), you cannot contribute to your TSP account.<sup>1</sup>

#### ***What if I am receiving workers' compensation?***

Workers' compensation benefits received from the Department of Labor's Office of Workers' Compensation Programs (OWCP) are not basic pay as defined by law. Consequently, you cannot contribute to your TSP account nor can you make loan payments while you are in nonpay status and receiving OWCP benefits.

#### ***Will I receive agency contributions if I am in nonpay status?***

Agency Automatic (1%) Contributions made to the TSP accounts of employees covered by FERS<sup>2</sup> must be determined by using the basic pay earned by the employees during the pay period. Agency Matching Contributions are made to the TSP accounts of FERS employees only if the employees make their own contributions for the pay period. Consequently, if you are in nonpay status for one or more pay periods, you will not receive agency contributions for those pay periods.<sup>1</sup>

#### ***Can I make an open season election if I am in nonpay status?***

Yes. If you complete the TSP Election Form (TSP-1) and submit it to your personnel office during the TSP open season, your election will be processed even though no contributions can be made to your account while you are in nonpay status. As soon as you return to pay status, your TSP contributions and, if FERS, your agency contributions will begin based on your most recent TSP election.

(Continued on page 2)

<sup>1</sup> If you are in nonpay status to perform military service, you may be entitled to make and receive retroactive TSP contributions when you return to pay status. See your personnel office for more information when you return.

<sup>2</sup> FERS refers to the Federal Employees' Retirement System, the Foreign Service Pension System, and other equivalent Government retirement plans.

***Can I make interfund transfers if I am in nonpay status?***

Yes. An interfund transfer is the movement of some or all of your existing account balance among the three TSP investment funds. Consequently, you may make interfund transfers just like employees in pay status.

***Can I receive a TSP loan while I am in nonpay status?***

Under the TSP loan program, loan payments can be made only through payroll deductions. Consequently, if you are in nonpay status (even though you may be receiving workers' compensation benefits), you can not receive a TSP loan until you return to pay status.

***What if I have a TSP loan and I am placed in nonpay status?*<sup>1</sup>**

Because loan payments can only be made through payroll deductions, you cannot make payments while you are in nonpay status. If your absence from duty has been approved, you must take one of the following actions: (1) send a copy of your SF-50, Notification of Personnel Action, documenting your nonpay status and its beginning and ending date to the TSP recordkeeper or (2) ask an agency official (your supervisor or your personnel or payroll office representative) to send written notification to the TSP recordkeeper on Form TSP-41, Notification to TSP of Nonpay Status, or agency letterhead to document your nonpay status and its beginning and ending dates. If your nonpay status is extended, you must provide the TSP recordkeeper with documentation of the extension.

<sup>1</sup> Application of the rules in paragraphs two and three of this answer may be different if you are in nonpay status to perform military service. Contact the TSP recordkeeper at (504) 255-6000 for assistance.

If you miss correct loan payments for less than 90 days, your loan payment schedule will be extended. However, your education, medical, or financial hardship loan must be repaid in full by the fifth anniversary of the loan issuance date; your residential loan must be repaid in full by the eighteenth anniversary of the loan issuance date. If you cannot repay your loan within the required time frame, you will be notified by the TSP recordkeeper.

If your payments resume more than 90 days from the last correct payment, but less than one year from the start of nonpay status, you must reamortize your loan. If you do not reamortize your loan, you will have to prepay the loan in full or a taxable distribution of the unpaid balance and any accrued interest will be declared.

If you do not return to pay status and resume your loan payments within one year, you will have to prepay your loan in full by the one-year anniversary of your nonpay status, or a taxable distribution of the unpaid balance and any accrued interest will be declared.

For more information about TSP loans and your responsibilities, see the booklet, *Thrift Savings Plan Loan Program*, available from your personnel office. Questions regarding your loan payments should be directed to your servicing personnel or payroll office. Questions regarding notifications, reamortizations, or taxable distributions should be directed to the TSP recordkeeper at (504) 255-6000.

***Can I withdraw my TSP account while I am in nonpay status?***

By law, TSP accounts can be withdrawn only after participants separate from Federal service. Consequently, you cannot withdraw your account while you are in nonpay status.



**Thrift Savings Plan**

**TSP-20-H**

**Hardship Loan  
Application**

**December 1988**

**THRIFT SAVINGS PLAN  
HARDSHIP LOAN APPLICATION****TSP-20-H**

Beginning in December 1988, you may apply for a financial hardship loan in an amount greater than \$1,000. To do so, you must use this Hardship Loan Application (Form TSP-20-H). Applications for self-certified hardship loans of \$1,000 (for which you may use the Loan Application, Form TSP-20) will be accepted only through March 31, 1989. This Hardship Loan Application, Form TSP-20-H, must be used for all financial hardship loan applications received after March 31, 1989.

Information on your current financial situation (income, expenses, and financial assets) is required to document your financial hardship loan application. You may qualify for a financial hardship loan if your regular monthly expenses exceed your net monthly income (that is, your income after taxes and retirement deductions), and if you do not have sufficient financial assets to draw upon. You may also qualify for a hardship loan if you have certain extraordinary expenses that you cannot cover with one month's net income, and if you do not have sufficient financial assets to cover the expense.

In addition to meeting the requirements for financial hardship, you must have at least \$1,000 of your own contributions and associated earnings in your Thrift Savings Plan account in order to obtain a loan, and the amount of the loan is subject to limits in Federal tax law. Finally, you must meet a pay test—the amount left in your paycheck after a loan payment is deducted must equal at least 10% of your basic pay. (See the booklet, "Thrift Savings Plan Loan Program.")

This application form consists of six sections:

- I. Information About You
- II. Information About Your Spouse
- III. Financial Statement
- IV. Loan Request
- V. Documentation Required
- VI. Certification

The instructions for all sections begin on the back of this page. It is very important that you read all the instructions carefully before you begin to complete this form. Please type or print your responses. Note that you must sign and date, under penalty of perjury, Section VI, Certification, which certifies that the information you provide is true and complete to the best of your knowledge.

At the end of this application, there is an optional worksheet (Worksheet to Calculate Your Loan Amount), which uses items from Section III, Financial Statement. (These items are highlighted with a ◀.) Your eligibility will be calculated for you, but if you want to know before you send in your application whether you qualify for a loan in the amount that you request (subject to the amount of your own contributions and associated earnings and the limits in Federal tax law), you can use the Worksheet to perform the necessary calculations. Do not submit the Worksheet with your application.

The Thrift Savings Plan Service Office will perform the calculations to determine the loan amount for which you qualify. When your application is processed, you will be sent a copy of a completed Worksheet and a Loan Agreement/Promissory Note in the amount you requested (or the amount you are eligible for, if it is less and you choose to accept a lesser amount).

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Please send your completed application and the required documentation to:

National Finance Center  
Thrift Savings Plan Service Office  
P.O. Box 61500  
New Orleans, LA 70161-1500

## INSTRUCTIONS

### I. INFORMATION ABOUT YOU

**1-7:** Please note that the address you provide on this form will be used only to return your Loan Agreement to you. The loan check and all other correspondence regarding the loan will be sent to the address on record for your Thrift Savings Plan account. If the address on your last semiannual Participant Statement is incorrect, and you have not asked your agency to change it, please notify your agency personnel or payroll office immediately to ensure that the correct address is provided to the Thrift Savings Plan.

**8:** Daytime Phone (area code and phone

number). If you have an FTS number, write "FTS" in the area code field and the FTS phone number in the number field (e.g., (FTS) 555-1234).

**9:** Do you have a dual appointment? If you work at two Federal Government jobs, this information may affect the processing of your loan.

**10:** Pay Schedule. Your pay schedule is used to compute the amount of your loan payments. If you have a dual appointment, you should check the pay schedule for the payroll office that you want to handle your loan payments.

### II. INFORMATION ABOUT YOUR SPOUSE

**11:** Are you married (even if separated from your spouse)? If you are married, even if separated from your spouse, you must check the "Yes" box and complete the rest of this section.

**17:** Notification or consent of spouse not possible. There is a requirement that your spouse be notified of your loan application if you are covered by the Civil Service Retirement System

(CSRS), or equivalent retirement plan, or give consent to your loan if you are covered by the Federal Employees' Retirement System (FERS), or equivalent retirement plan. If your spouse's whereabouts are unknown to you, or if you are covered by FERS and exceptional circumstances make it inappropriate to secure your spouse's consent, we will send you Form TSP-16, Request for Waiver.

### III. FINANCIAL STATEMENT

Complete each item, rounding to the nearest dollar. If your income, deductions, expenses, or assets for a particular item are 0, enter 0.

This form requests information on you, your spouse, and dependents. Dependents are defined as individuals whom you can claim as dependents for Federal income tax purposes at the time you apply for the loan.

If you are married and not separated, report income, expenses, and assets for both you and your spouse. If information cannot be assigned to you or your spouse individually, enter the total only. If you and your spouse are separated, report only your own income, expenses, and assets.

You must provide monthly income and expense figures to apply for a hardship loan:

- If you are paid monthly (12 times a year), you can take your salary or wages, tax withholding, FICA (Social Security)/Medicare deduction, and other retirement deductions directly from your current earnings and leave statement.
- If you are paid semimonthly (24 times a year), add the amounts from your last two earnings and leave statements.
- If you are paid biweekly (26 times a year), multiply the biweekly amounts on your current earnings and leave statement by 26 and divide by 12.
- If you are paid weekly (52 times a year), multiply the weekly amount from your current earnings and leave statement by 52 and divide by 12.
- If your monthly amounts fluctuate due, for example, to variations in number of hours worked and/or hourly rates of pay, total your actual monthly amounts for income and deductions for the last three months and divide by 3

- For other income, deductions, and expenses that are not received or paid monthly, be sure to calculate the monthly amount, e.g., divide a quarterly payment by 3.

**18: FAMILY SIZE.** Family size includes you, your spouse, and your dependents. If you are separated or divorced, it includes you and your dependents only if your dependents are living with you. If your dependents are living elsewhere and you contribute to their support, do not include them in family size but include in Item 37 the amount of support you pay. If children you cannot claim as dependents are living with you and you receive support for them, include them in family size and enter the amount of support you receive in Item 21.

#### MONTHLY INCOME

**19: Monthly Gross Salary or Wages.** Enter current monthly salary or wages (or enter average for the last three months and check the box). Enter income from all jobs if more than one job is held.

**20: Monthly Dividends and/or Interest.** Total your annual dividends and interest from the assets listed in Items 42-52 and divide by 12.

**21: Monthly Alimony, Maintenance, and/or Child Support.** Enter the amount of alimony, maintenance, and/or child support received each month. If payments are irregular, enter the average of the last three months.

**22: Other Monthly Income.** Describe and enter other monthly cash income. Include royalties and net income from real estate investments and a family business (i.e., monthly cash income minus monthly cash outlays). If net income is negative, enter a minus sign and remember to subtract it when you total your income in Item 23.

**23: Total Monthly Income.** Add all the entries in



# THRIFT SAVINGS PLAN HARDSHIP LOAN APPLICATION

TSP-20-H

## I. INFORMATION ABOUT YOU

1. Name \_\_\_\_\_  
Last First Middle
2. Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_  
Month Day Year
3. Social Security Number \_\_\_\_-\_\_\_\_-\_\_\_\_
4. Street Address \_\_\_\_\_
5. City \_\_\_\_\_ 6. State \_\_\_\_\_ 7. Zip Code \_\_\_\_\_
8. Daytime Phone (area code and number) (\_\_\_\_) \_\_\_\_\_
9. Do you have a dual appointment? ☐ Yes ☐ No
10. Pay Schedule (check box that indicates when you are paid):  
☐ Weekly ☐ Semimonthly (twice in each calendar month,  
☐ Biweekly (every two weeks, 24 times a year) 26 times a year) ☐ Monthly (once in each calendar month)  
☐ Other (specify) \_\_\_\_\_

## II. INFORMATION ABOUT YOUR SPOUSE

11. Are you married (even if separated from your spouse)? ☐ Yes ☐ No  
 If yes, please give the name and address of your spouse:
12. Name \_\_\_\_\_  
Last First Middle
13. Street Address \_\_\_\_\_
14. City \_\_\_\_\_ 15. State \_\_\_\_\_ 16. Zip Code \_\_\_\_\_
17. ☐ Check here if you do not know where your spouse is (CSRS or FERS) or if exceptional circumstances make it impossible to obtain your spouse's consent for your loan (FERS only).

## III. FINANCIAL STATEMENT

Please read the instructions carefully before you begin this section. Be sure to provide all the information requested.

18. FAMILY SIZE as defined in the instructions. \_\_\_\_\_

MONTHLY INCOME	YOU	YOUR SPOUSE	TOTAL
19. Monthly Gross Salary or Wages	_____	_____	_____
<input type="checkbox"/> Check here if you are using a three-month average.			
20. Monthly Dividends and/or Interest	_____	_____	_____
21. Monthly Alimony, Maintenance, and/or Child Support	_____	_____	_____
22. Other Monthly Income	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
23. Total Monthly Income			_____

**INSTRUCTIONS** *Continued***MONTHLY INCOME TAX AND RETIREMENT DEDUCTIONS**

**24–26: Monthly Federal, State, and Local Income Tax Withholding.** Enter the amount of monthly tax withholding for each.

**27: Monthly Payments of Estimated Taxes on Income.** If you make estimated tax payments on your income, calculate the amount you are paying monthly.

**28: Monthly FICA (Social Security)/Medicare Deduction.** If you or your spouse have more than one job, be sure to include the FICA (Social Security)/Medicare deduction for that other job also.

**29: Other Monthly Retirement Deductions.** These deductions do not include contributions to an Individual Retirement Account (IRA).

- If the retirement plan is FERS or a FERS equivalent plan, enter the amount of salary or wages that is withheld for the FERS Basic Benefit annuity.
- If the retirement plan is CSRS or a CSRS equivalent plan, enter the amount of salary or wages that is withheld for the CSRS annuity.
- Enter the amount of your own contribution to the Thrift Savings Plan (TSP) and, if applicable, your spouse's own contribution to the TSP.
- If you or your spouse have more than one job, enter the amount the other employer withholds each month for the retirement plan of the other job.

**30: Total Monthly Income Tax and Retirement Deductions.** Add all the entries in the Total column for items 24 through 29.

**31: TOTAL MONTHLY INCOME NET OF TAX AND RETIREMENT DEDUCTIONS.** Subtract the Total Monthly Income Tax and Retirement Deductions in item 30 from the Total Monthly Income in item 23.

**MONTHLY SCHEDULED HOUSEHOLD EXPENSES**

**32: Monthly Household Rental or Mortgage Payment.** Enter your monthly rental payment or, if applicable, your monthly mortgage payment on your primary residence. If real estate taxes and homeowner's insurance are included in your payment, include them here and enter 0 in items 33 and 34. If additional mortgages are outstanding on your primary residence, include the monthly payment on them as well. If you have a TSP loan for purchase of a primary residence, include the monthly payment for that loan also.

**33: Monthly Household Real Estate Tax.** If you pay your real estate tax separately from your mortgage payment, enter an amount representing one month's real estate tax for your primary residence.

**34: Monthly Household Homeowner's Insurance.** If you pay your homeowner's insurance

enter an amount representing one month's homeowner's insurance payment for your primary residence.

**35: Monthly Household Utilities.** Figure your total payments for utilities (for example, gas, electric, telephone, and water bills) over the last 12 months and divide by 12. Do not duplicate any items that are included in your monthly rental.

**36: Monthly Household Dependent Care.** Enter the amount you pay each month for care for your spouse, a dependent child, or a dependent adult who cannot be left alone while other adults are at work.

**37: Monthly Expense for Alimony, Maintenance, and/or Child Support.** Enter the amount paid each month in alimony, maintenance, and/or child support.

**38: Monthly Loan Payments.** Describe and enter monthly payments for installment loans with set monthly payments (for example, automobile and unsecured personal loans). Do not include payments for credit card purchases. Do not include payments for TSP loans for education, medical, or hardship purposes.

**39: Total Monthly Scheduled Household Expenses.** Add all the entries in items 32 through 38.

**40: EXTRAORDINARY EXPENSE.** Enter the total amount of the expense in item 40. An extraordinary expense is defined as one of the following:

- The cost of household improvements or household help required due to illness of or accident to you, your spouse, or your dependents that:
  - is not yet paid for,
  - was incurred no more than 12 months ago or will be incurred over no more than the next 12 months,
  - is not eligible for deduction as a medical expense for Federal income tax purposes (expenses deductible as medical expenses qualify for a TSP medical loan and should not be entered here), and
  - is not covered by insurance.

"Household Improvements" are changes to your living quarters or the installation of special equipment which is necessary to accommodate the circumstances of the incapacitated person. "Household help" is the service of a person who is hired to do housework that the incapacitated person cannot perform.

- Uninsured personal casualty loss within the last 12 months that would be eligible for deduction for Federal income tax purposes. This is sudden property loss resulting from damage or destruction by fire, storm, or other casualty, or due to theft of property.
- Unpaid legal costs associated with a separation or divorce that were incurred no more than 12 months ago or will be incurred over

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

MONTHLY INCOME TAX AND RETIREMENT DEDUCTIONS	YOU	YOUR SPOUSE	TOTAL
24. Monthly Federal Income Tax Withholding	_____	_____	_____ .00
25. Monthly State Income Tax Withholding	_____	_____	_____ .00
26. Monthly Local Income Tax Withholding	_____	_____	_____ .00
27. Monthly Payments of Estimated Taxes on Income			
■ Federal	_____	_____	_____ .00
■ State	_____	_____	_____ .00
■ Local	_____	_____	_____ .00
28. Monthly FICA (Social Security)/Medicare Deduction	_____	_____	_____ .00
29. Other Monthly Retirement Deductions			
■ FERS or FERS Equivalent Basic Benefit Annuity	_____	_____	_____ .00
■ CSRS or CSRS Equivalent Annuity	_____	_____	_____ .00
■ TSP Contributions	_____	_____	_____ .00
■ Other	_____	_____	_____ .00
30. Total Monthly Income Tax and Retirement Deductions			_____ .00
31. TOTAL MONTHLY INCOME NET OF TAX AND RETIREMENT DEDUCTIONS (Item 23 minus Item 30)			_____ .00

## MONTHLY SCHEDULED HOUSEHOLD EXPENSES

32. Monthly Household Rental or Mortgage Payment	_____	_____ .00
33. Monthly Household Real Estate Tax (if paid separately from rental or mortgage)	_____	_____ .00
34. Monthly Household Homeowner's Insurance (if paid separately from rental or mortgage)	_____	_____ .00
35. Monthly Household Utilities (if paid separately from rental)	_____	_____ .00
36. Monthly Household Dependent Care	_____	_____ .00
37. Monthly Expense for Alimony, Maintenance, and/or Child Support	_____	_____ .00
38. Monthly Loan Payments	_____	_____ .00
	_____	_____ .00
	_____	_____ .00
	_____	_____ .00
	_____	_____ .00
	_____	_____ .00
39. Total Monthly Scheduled Household Expenses		_____ .00

40. EXTRAORDINARY EXPENSE as defined in the instructions.

Check the expense(s) you have:

- ☐ Household help/improvements  
☐ Uninsured casualty loss  
☐ Legal expenses for separation/divorce

**INSTRUCTIONS** *Continued***FINANCIAL ASSETS**

Financial assets are cash or other assets that are readily converted to cash. If you do not know the precise amount of an asset, estimate the amount based on the balance at the end of the last period for which you have a statement and any changes since then. Do not include your Individual Retirement Account (IRA) if you have one. Do not list any non-liquid asset (for example, jewelry, your car, or your residence) or any asset that is used as collateral for a debt.

**41–45:** Enter the face value of the specified assets.

**46–50:** Enter the current market or redemption value of the specified assets.

**51: Life Insurance.** Enter the cash value of universal or whole life insurance policies.

**52: Other Financial Assets.** List and enter the value of other financial assets you may have.

**53: Total Financial Assets.** Add the entries in Items 41 through 52.

**IV.  
LOAN  
REQUEST**

**54: Amount of Loan You Are Requesting.**

You may not borrow more than the amount of your contributions to the TSP and the earnings on your contributions. You may not borrow less than \$1,000. To figure the maximum amount you can borrow (subject to the amount of your own contributions and associated earnings in your TSP account, the limits in Federal tax law, and the pay test), you may use the attached Worksheet. (Do not submit the Worksheet with your application.) The maximum amount you qualify for will be calculated for you based on the infor-

mation you provide, whether you complete the Worksheet or not.

**55: Requested Amount Too Large.** If the amount you request is more than the amount for which you qualify, indicate whether you want to apply for the maximum amount that is available to you. You will be notified whether you are eligible for the loan amount you request.

**56: Amount of Time to Repay.** For a loan for financial hardship, you have between one and four years to repay.

**V.  
DOCUMENTATION  
REQUIRED**

Make sure you have attached a copy of your current earnings and leave statement. Your statement will be used to verify that the amount left in

your paycheck after a loan payment is deducted will equal at least 10% of your basic pay.

**VI.  
CERTIFICATION**

Read the certification, sign your name, and enter the date you signed the form.

---

**Don't forget to:**

- Enclose a copy of your current earnings and leave statement
  - Sign and date your application (Section VI)
  - Keep a copy of your application for your records
-

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

FINANCIAL ASSETS	YOU	YOUR SPOUSE	TOTAL
41. Cash on Hand	_____ + _____	_____ + _____	_____ = .00
42. Checking Accounts	_____ + _____	_____ + _____	_____ = .00
43. Savings Accounts	_____ + _____	_____ + _____	_____ = .00
44. Money Market Funds	_____ + _____	_____ + _____	_____ = .00
45. Certificates of Deposit	_____ + _____	_____ + _____	_____ = .00
46. Stocks	_____ + _____	_____ + _____	_____ = .00
47. Corporate Notes and Bonds	_____ + _____	_____ + _____	_____ = .00
48. U.S. Savings Bonds	_____ + _____	_____ + _____	_____ = .00
49. Other U.S. Government, Federal Agency, State, or Municipal Securities	_____ + _____	_____ + _____	_____ = .00
50. Mutual Funds	_____ + _____	_____ + _____	_____ = .00
51. Life Insurance	_____ + _____	_____ + _____	_____ = .00
52. Other Financial Assets	_____ + _____	_____ + _____	_____ = .00
_____	_____ + _____	_____ + _____	_____ = .00
_____	_____ + _____	_____ + _____	_____ = .00
53. Total Financial Assets	_____ + _____	_____ + _____	_____ = .00

**IV.  
LOAN  
REQUEST**

Please read the instructions on page 6 for information on the maximum loan you can obtain.

54. Amount of loan you are requesting \_\_\_\_\_ .00
55. If the amount you are requesting is more than the maximum you can obtain, do you wish to borrow the maximum available to you? ☐ Yes ☐ No
56. Amount of time to repay \_\_\_\_\_ year(s) and \_\_\_\_\_ month(s)

**V.  
DOCUMENTATION  
REQUIRED**

Attach a copy of a current earnings and leave statement.

**VI.  
CERTIFICATION**

I certify, under penalty of perjury, that the information in this Hardship Loan Application is true and complete to the best of my knowledge. **Warning:** Any intentional false statement in this application or willful misrepresentation concerning it is a violation of the law and is punishable by a fine of as much as \$10,000 or imprisonment for as long as five years, or both.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**PRIVACY ACT  
NOTICE**

We are authorized to request this information under Title 5, U.S. Code Chapter 84, Federal Employees' Retirement System, Subchapter III, Thrift Savings Plan. Executive Order 9397 authorizes us to ask for your social security number, which will be used to identify your account. We will use the information you give us to process your loan application. This information may be shared with other Federal agencies in order to administer your account or for statistical, auditing or archiving purposes. It may also be shared with Federal, state, and local agencies to determine benefits under their programs, to obtain information necessary under this program, or to report income for tax purposes. In addition, we may share this information with the Parent Locator Service, Department of Health and Human Services, for the purpose of enforcing child support obligations against the TSP participant. We may share this information with law enforcement agencies when they are investigating a violation of civil or criminal law. We may give this information to financial institutions, private sector audit firms, annuity vendors, current spouses, and, to a limited extent, beneficiaries and former spouses. Finally, this information may also be disclosed to others on your written request. While the law does not require you to give any of the information requested on this form, it may not be possible to process your application if you do not give us this information.

Please send your completed application and the required documentation to:

National Finance Center  
Thrift Savings Plan Service Office  
P.O. Box 61500  
New Orleans, LA 70161-1500

# WORKSHEET TO CALCULATE YOUR LOAN AMOUNT

The following Worksheet will help you calculate the loan amount for which you qualify, subject to the amount of your own contributions and associated earnings in your TSP account and to the limits set in Federal tax law (see the booklet, "Thrift Savings Plan Loan Program"). If the result in Item S of the Worksheet is \$1,000 or more, you qualify for a financial hardship loan in that amount, subject to the limits mentioned above and the requirement that the amount left in your paycheck after your loan payment, payroll allotments, and other deductions will equal at least 10% of your basic pay. You do not need to complete this Worksheet unless you want to know the maximum amount you can borrow before you apply for a loan.

## TO DETERMINE IF YOUR REGULAR EXPENSES EXCEED YOUR NET MONTHLY INCOME:

A. Total Monthly Scheduled Household Expenses: Item 39 in the Financial Statement.

B. Allowance for Ordinary Monthly Recurring Expenses:

A set amount is allowed for ordinary monthly recurring expense items, for example, food, clothing, household operations, entertainment, education, health care, and other miscellaneous expenses. That amount is determined by a factor based on your monthly income and your family size.

In the left-hand column of the adjacent table, find the monthly income range that matches your Total Monthly Income (Item 31 in the Financial Statement). Go across that line to find the factor that applies to you on the basis of your family size (Item 18 in the Financial Statement). (These factors are derived from data from the U.S. Bureau of Labor Statistics.)

Total Monthly Income	Family Size		
	1 or 2	3 or 4	5 or more
Less than \$1,250	.75	.90	.90
\$1,250-1,666	.65	.75	.75
\$1,667-2,499	.60	.65	.65
\$2,500-3,332	.50	.55	.60
\$3,333 +	.45	.45	.50

Multiply the factor from this table by the amount of your Total Monthly Income Net of Tax and Retirement Deductions (Item 31 in the Financial Statement), and enter the answer. Round to the nearest whole dollar.

$$\text{Factor} \times \text{Item 31} = \text{B}$$

C. Total Monthly Regular Household Expenses: Item A plus Item B.

$$A + B = C$$

D. Total Monthly Income Net of Tax and Retirement Deductions: Item 31 in the Financial Statement.

$$D$$

E. Item C minus Item D: If Item C is less than Item D, enter 0.

$$C - D = E$$

F. Item E times 12:

$$12 \times \text{Item E} = F$$

## TO DETERMINE IF YOUR EXTRAORDINARY EXPENSE EXCEEDS YOUR NET MONTHLY INCOME:

G. Total Monthly Regular Household Expenses: Item C.

$$C = G$$

H. Extraordinary Expense: Item 40 in the Financial Statement.

$$H$$

I. Item G plus Item H.

$$G + H = I$$

J. Total Monthly Income Net of Tax and Retirement Deductions: Item 31 in the Financial Statement.

$$J$$

K. Item I minus Item J: If Item I is less than Item J, enter 0.

$$I - J = K$$

L. The smaller of Item H or Item K.

$$\text{H or K} = L$$

## TO CALCULATE THE FINANCIAL ASSETS YOU HAVE TO DRAW UPON:

M. Total Financial Assets: Item 53 in the Financial Statement.

$$M$$

N. Financial Reserve: Item D times 6.

$$6 \times \text{Item D} = N$$

O. Item M minus Item N: If Item M is less than Item N, enter 0.

$$M - N = O$$

## TO CALCULATE THE MAXIMUM LOAN YOU MAY OBTAIN:

P. Amount by which a year's regular expenses exceed net income: Item F.

$$P = F$$

Q. Amount of the defined extraordinary expense that cannot be covered by one month's net income: Item L.

$$Q = L$$

R. Amount of financial assets considered available to meet your need: Item O.

$$R = O$$

S. Item P plus Item Q minus Item R. This is the amount of the hardship loan for which you qualify (subject to the limits mentioned above).

$$P + Q - R = S$$

*Sent via  
e-mail to all  
OH PM employees*

November 22, 1995

Director, Central Office Human Resources Management Service (055)

Pay and Leave Treatment of Employees Affected by the Lapse in Appropriations

Human Resources Management Liaisons

1. Attached is guidance from the Office of Personnel Management dated November 21, 1995, that provides information regarding pay, leave, and documentation of personnel actions.
2. Also attached are timekeeping instructions in the form of Questions and Answers. Please note that these timekeeping instructions will also be issued to timekeepers by the Central Office (CO) Finance Service.
3. OPM's guidance should answer most of the questions necessary in order to ensure timely payroll processing. While we anticipate that there will be other questions, those will be addressed separately since we wanted to get this information out to you as soon as possible.
4. Questions regarding leave may be referred to a representative of Central Office Human Resources Management Service on 565-8687. Questions regarding timekeeping may be referred to CO Finance Service on 565-8403.

George W. Williams

Attachments

#### TIME AND ATTENDANCE Q&As

1. How will absences be recorded for the period of November 14 through November 19?
  - A. Except as noted below, absences occurring during the lapse in appropriation period will be recorded on the Time and Attendance Report as "Authorized Absence". This provision applies to employees who were initially given furlough notices as well as essential/excepted employees who were permitted periods of absence during the furlough. (See exceptions below for employees on approved Office of Workers' Compensation Program (OWCP) status or continuation of pay (COP).)

Note: Employees who were on approved leave on November 14, 1995, must be charged leave for the approximate period of time from the beginning of their tour to the time other similarly situated employees departed work after receiving furlough notices. Each organization must determine the approximate period of leave charge for affected employees.

2. How will absences be recorded for employees on approved OWCP?

A. Employees on annual or sick leave as a result of an approved OWCP case will continue to be charged annual or sick leave as appropriate during the furlough period. These employees may elect to buy back the leave in same manner as is if there was no furlough.

3. How will absences be recorded for employees in a COP status?

A. Employees on COP will continue in a COP status. Absences during the November 14-19 period do not serve to extend the 45-day period of entitlement.

4. How will absences be recorded for employees on LWOP or AWOL status?

A. Employees in a LWOP/AWOL status immediately prior to November 14 and immediately after November 19 will be considered in a LWOP/AWOL status during the furlough period. For employees who were on LWOP or AWOL status either before or after the furlough period, supervisors must make a determination on the amount of LWOP to be charged.

Page 2.

5. How will absences be recorded for employees on court leave or military leave?

A. Employees on court or military leave will be recorded as "Authorized Absence."

6. Should compressed work schedules be changed for employees placed in a furlough status?

A. Compressed work schedules will not be changed.

7. How is "use or lose" annual leave that was scheduled but not charged for the period of November 14 through November 19 affected?

A. "Use or lose" leave scheduled but not used due to absences resulting from furlough notices may be restored if appropriate authority determines that the employee was prevented from using the leave due to an "exigency of the public [service], namely, the need to furlough employees due to lack of work funds".

NOTE: Employees should still be make every effort to schedule "use or lose" leave before the end of the leave year.

8. How is compensatory time that was scheduled but not charged for the period of November 14 through November 19 affected?

A. Payment to FLSA exempt employees for lost compensatory time may be made if the overtime approving official provides a written statement that the employee's failure to use the compensatory time was the result of exigency of public service. Payment to FLSA non-exempt employees will be automatically made by the payroll office for any forfeited compensatory time. (See MP-6 Part V Supp 2.2 Paragraph 105.05)

9. How is employee's pay affected.

A. Employees absent due to the lapse in appropriation must receive the same pay they would have received had they actually worked. This includes regularly scheduled overtime, night differential and any other premium pay, allowances or differentials the employee would have otherwise received.

November 21, 1995

**MEMORANDUM FOR DIRECTORS OF PERSONNEL (CPM-95-8)**

**FROM:       ALLAN D. HEUERMAN**  
**ASSOCIATE DIRECTOR**  
**FOR HUMAN RESOURCES SYSTEMS**

**SUBJECT: Pay and Leave Treatment of Employees Affected by**  
**the Lapse in Appropriations;--Documentation of**  
**Personnel Actions**

Congress has passed and the President has signed legislation providing as follows:

Any Federal employees furloughed as a result of a lapse in appropriations, if any, after midnight November 13, 1995, until the enactment of this Act shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

The purpose of this legislation is to make Federal employees whole by ensuring that they receive their "standard rate of compensation" for the entire period of the lapse in appropriations. With regard to persons who would have been in a previously approved paid leave status if the lapse in appropriations had not occurred, the policy set forth below is consistent with the instructions provided to agencies on November 17, 1995. These instructions were based on the premise that, during the lapse in appropriations, employees must be (1) at work performing excepted activities, or (2) furloughed, and that they cannot therefore be in a paid leave status during that period. Such employees must receive the same pay they would have received for an equivalent period of work performed for the agency, without regard to any previously approved paid leave.

The following guidance has been prepared by the Office of Personnel Management in consultation with the Office of Management and Budget. As used below, the term "excepted employees" refers to employees who were excepted from a furlough because they were performing functions related to national security, protection of life or property, or the orderly suspension of agency operations.

Pay

For periods of time during which employees were furloughed, they must receive the same pay they would have received for an equivalent amount of work performed for the agency. Therefore--

- \* Employees are entitled to receive their rate of basic pay for all periods of time during which they would have been in a pay status but for the furlough;
- \* Employees who were regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable are entitled to receive overtime pay, night pay, or other premium pay as if the work had actually been performed;
- \* The hours of duty during which employees were furloughed (including regularly scheduled overtime hours and standby duty) must be considered "hours of work" for pay administration purposes under the Fair Labor Standards Act; and
- \* Allowances, differentials, and other payments must be paid as if the employee actually continued to work.

Excused Absences and Charges to Leave

- \* Except as provided below, absences resulting from the furlough of employees during the lapse in appropriations must be recorded as excused absences and may not be charged to any form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off, or credit hours under a flexible work schedule.
- \* In the case of employees who were on approved leave without pay during the lapse in appropriations, absences during the lapse in appropriations must continue to be charged to leave without pay for the duration of the period of approved leave without pay.
- \* In the case of employees who were on approved paid leave (or compensatory time off or credit hours) on November 14, leave (or compensatory time off or credit hours) should be charged only for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. The remaining period of time in the employee's regularly scheduled tour of duty must be recorded as an excused absence.

"Use or Lose" Annual Leave

- \* Employees and agencies should make every effort to schedule, within the time limits specified by regulation, any additional "use or lose" annual leave now made available to a furloughed employee because previously approved annual leave was canceled during the lapse in appropriations. If, however, the employee is unable to reschedule such annual leave and it is forfeited at the end of the leave year, the amount of annual leave that was canceled during the lapse in appropriations may be considered for restoration under 5 CFR 630.308.

Alternative Work Schedules (AWS)

- \* Each agency should have a policy specifying when flexible work schedules must be established and may be changed. Normally, such schedules are established in advance of the pay period involved. Under such a policy, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the pay period begins.

Documentation of Personnel Actions

- \* Agencies should not process SF 50's to document a furlough resulting from the lapse in appropriations on November 14, and SF 50's that were processed must be canceled using Nature of Action Code "001." Do not record the furlough with any document designated for long-term filing in the Official Personnel Folder.
- \* Agencies need not provide a furlough notice to an employee who did not receive a notice during the lapse in appropriations.



Government of the District of Columbia

Department of Employment Services

• 500 C Street, N.W. •

Washington, D.C. 20001

## OFFICE OF UNEMPLOYMENT COMPENSATION

IMPORTANT NOTICE

## TO ALL FEDERAL EMPLOYEES IN THE DISTRICT OF COLUMBIA:

You can file for unemployment insurance benefits if you are furloughed on or after November 13, 1995, due to the absence of a FY 1996 Appropriations or Continuing Resolution. If you are unemployed as the result of a government wide or agency wide shut down and want to file, please complete the "Initial Claim For Furloughed Federal Government Employees" form provided with this letter to you by your personnel authority and return to the designated staff of your personnel office. This form must also be completed by your personnel office.

Your claim will be processed upon receipt of your claim form from your agency if the furlough lasts more than one week. After processing, you will be mailed your first biweekly payorder card along with instructions and other information about your claim. The effective date of your claim will be the first day that the furlough begins. The District of Columbia has a one-week waiting period.

YOU MAY NOT USE THIS PROCESS FOR THE FILING OF ANY UNEMPLOYMENT CLAIM EXCEPT FOR A CLAIM RESULTING FROM A GOVERNMENT WIDE OR AGENCY WIDE FURLOUGH. Unemployment claims resulting from agency downsizing and/or normal terminations will continue to be taken using the regular in-person claim taking process.

IF YOU ARE PAID RETROACTIVELY FOR THE FURLOUGH PERIOD, YOU WILL BE REQUIRED TO PAY BACK ANY UNEMPLOYMENT INSURANCE BENEFITS YOU RECEIVED.



"Helping People Help Themselves"



Government of the District of Columbia

Department of Employment Services

500 C Street, N.W.

Washington, D.C. 20001

## INSTRUCTIONS FOR COMPLETING AND FILING A FEDERAL FURLOUGH CLAIM

The Federal employing agency must complete an INITIAL CLAIM FOR FURLOUGHED FEDERAL GOVERNMENT EMPLOYEES for each affected employee and returned the forms with documentation to the District of Columbia Department of Employment Services for processing. These forms should be completed and returned within 7 days of the date the furlough begins to the address below. A copy should be retained by the Federal Agency and a copy given to the Federal Employee.

D. C. DEPARTMENT OF EMPLOYMENT SERVICES (DCDOES)  
OFFICE OF UNEMPLOYMENT COMPENSATION  
500 C Street, Room 517  
WASHINGTON, D. C. 20001

Items 1 through 20: Please have furlougees print clearly when answering these questions.

- Item 1. Print Last Name, First Name, Middle Initial  
( including Jr, Sr, II, etc. following Last Name
- Item 2. Enter Social Security Number)
- Item 3. Print Street Address ( Do not abbreviate and include  
apartment number if applicable)
- Item 4. Print city ( Do not abbreviate)
- Item 5. Print state
- Item 6. Enter zip code
- Item 7. Indicate sex with a "X" in the appropriate box
- Item 8. Enter number of completed years (High School -12, College  
Degree, BS or BA - 16, Master Degree - 18, PH-D - 19)
- Item 9. Enter Marital Status
- Item 10. Enter Date of Birth (Month, Day, Year)
- Item 11. Enter Ethnic Group (White, Hispanic, Black, Indian, other)
- Item 12. Enter Union Status (union or non-union)
- Item 13. Enter telephone number ( Include area code)
- Item 14. Duty station address (city and state)  
Duty station should be recorded as shown on personnel  
document for your agency.
- Item 15. Enter Employer's mailing address ( Use address where  
finance office is located)
- Item 16. Enter dates of most recent employment



"Helping People Help Themselves"

-2-

- Item 17. Indicate unemployment compensation status with "X"
- Item 18. Enter citizenship status (If an alien, indicate green card alien registration number.
- Item 19. Indicate Retirement status with a "X".
- Item 20. Indicate whether worked for Federal Government in past 30 days with a "X".

Items 21 through 26: Leave blank: To be completed by DCDOES Staff only.

Items 27 through 30, please print clearly when furnishing this information.

Item 27. Preprinted.

Item 28. Enter all gross wages information in federal civilian service amounts and the account number.

Item 29. Attach documentary proof showing federal civilian employment. (Federal Agency letterhead notice or the SF-8)

Item 30. Already preprinted

Item 31: Please have furloughed sign.

Item 32: Please have Agency Representative sign. This form is not complete unless it is signed and dated. Please enter signer's title and telephone number.

The claim form must be signed by both the employee and an authorized agency representative.

# Initial Claim For Furloughed Federal Government Employees

Claimant: Please complete Items Numbered 1 through 20 (Please Print Clearly)

1. Claimant's Name: (Last First MI)			11. Claim Year/Level		
2. Social Security Number:			12. Claim Type: <input type="checkbox"/> New <input type="checkbox"/> Address		
3. Street Address			13. Ward		
4. City			14. MFE Code		
5. State			15. Filing Date...		
6. Zip Code			16. Effective Date...		
7. Sex <input type="checkbox"/> Female <input type="checkbox"/> Male		8. Education		9. Marital Status	
10. Date of Birth		11. Ethnic		12. Union	
13. Telephone Number		14. Duty Station Address		15. Dates of Employment From: To:	
16. Employer's Mailing Address (Federal Agency)					
17. Have you claimed, received, or applied for unemployment compensation in the past twelve months? If "Yes" enter date, city, and state of the claim. <input type="checkbox"/> Yes <input type="checkbox"/> No					
18. (Check One) I am a citizen or national of the U.S. <input type="checkbox"/> Yes <input type="checkbox"/> No I am in a satisfactory immigration status <input type="checkbox"/> Yes <input type="checkbox"/> No Alien Registration Number _____					
19. Did you receive, will you receive, or are you receiving payment under any type of retirement plan, pension, social security, IRA, KEOGH, etc., based upon previous employment? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, How much monthly? _____					
20. Have you worked for the Federal Government for at least the past 30 days? <input type="checkbox"/> Yes <input type="checkbox"/> No					

## Federal Agency: Please complete Gross Wages Information for Items Numbered 27 through 29

27. Base Period July 1, 1994 June 30, 1995		Code Calendar Quarter	28. Annual Salary in Federal Civilian Service		29. Documentary evidence (Federal Agency Notice or SF-8) Showing Federal Civilian employment.	
Quarter Ending	Year		WAGES		ACCOUNT NUMBER	
9-30	94	3rd Qtr				
12-30	94	4th Qtr				
3-31	95	1st Qtr				
6-30	95	2nd Qtr				

30. Reason for Separation: Furlough

I, the claimant, understand that penalties are provided by law for an individual making false statements to obtain benefits; that any determination based on this affidavit is not final; it is subject to correction upon receipt of wage and separation information from the Federal agency for which I worked; that bene payments made as a result of such determination may be adjusted on the basis of information furnished by the Federal agency; and that any amount overpaid may have to be repaid or offset against future benefits.

I, the claimant, swear, or affirm, that the above statements, to the best of my knowledge and belief, are true and correct.

31. Signature of Claimant	Date
I HEREBY witness the signature of this claimant and CERTIFY that the claimant has met the registration requirements of this state.	
32. Signature of Federal Agency Representative/Title	Telephone Number
George Williams, Director of Human Resources	565-8687
Management Justice	Date

FD-502 (Rev. 10-1-80)

Employer's Self Claim Filing Fo

## *D.C. Department of Employment Services*

### UNEMPLOYMENT COMPENSATION FOR FEDERAL GOVERNMENT EMPLOYEES IN THE DISTRICT OF COLUMBIA

## Questions and Answers

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**Q. What Benefits Are Furloughed Federal Government Employees Entitled To Who Work in the District of Columbia?**

**A.** Federal employees who are unemployed as a result of a furlough are entitled to the same benefits as any employee on a temporary layoff. Benefits are based on gross weekly earnings. In the District, benefits are calculated at approximately 50% of the employee's gross weekly wage up to a maximum weekly benefit of \$347 per week. The minimum amount of benefits is \$50 per week.

**Q. Are All Federal Employees Entitled To District of Columbia Benefits?**

**A.** No. The federal employee's duty station determines the state in which the claim is filed. Federal employees whose duty station is in the District of Columbia will receive benefits calculated on the above formula. Employees outside the District of Columbia will receive benefits based on the formula in the state in which their duty station is located. The determining factor is where the duty station is located, not the location of the agency headquarters or payroll office.

**Q. How Long Must the Furlough Continue For Federal Employees To Be Eligible For Benefits?**

**A.** The District of Columbia has a one-week waiting period. Therefore, the first week of unemployment is not compensable and no benefits may be paid for the first week claimed. If a furlough should last longer than one week, the second week and succeeding weeks are compensable.

**Q. How Will Furloughed Federal Employees Apply For Benefits?**

**A.** To handle the anticipated large volume of claims, Federal agencies are being provided a special self-filing claim form with instructions on how the claim must be filed. The claim forms and instructions will be distributed by agency personnel authorities should it become necessary.

*D.C. Department of Employment Services*  
*Joseph P. Yeldell, Director*

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*Government of the District of Columbia*  
*Marion Barry, Jr., Mayor*

Q. How Long Will Benefits Continue?

A. The maximum duration of benefits in the District of Columbia is 26 weeks.

Q. When Will I Receive My First Check?

A. The initial payment is generally issued within 10 days of the receipt of your first mail claim card. While payments are made by the District of Columbia, the funds to pay benefits are provided by the federal government. If federal funding authority is not available, however, the actual payment of benefits may be delayed.

D.C. Department of Employment Services  
Joseph P. Yeldell, Director



Government of the District of Columbia  
Marion Barry, Jr., Mayor

Attachment F

Broadcast Messages, Media Talking Points, Etc.

Secretary Brown's Daily Message to VA Employees  
November 17, 1995

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I just want to thank each VA employee during this difficult time for your dedication to helping our veterans. Once again, you are showing Americans that our mission comes first, no matter the adverse circumstance. That you would place your responsibilities to our patients and beneficiaries above the uncertainties and disruptions of this period makes me very proud of the caliber of people who are "putting veterans first" throughout VA. I wish I could tell you how long this furlough period will last and that your pay is not in jeopardy. However, no VA employees -- neither those who remain on the job or those who were furloughed -- will be paid on Dec. 1 if there is no agreement on funding by Nov. 29. We all hope for a quick resolution. I will do all within my authority and power to make certain that veterans -- and VA employees -- do not become budget casualties.

Message from Secretary Brown, December 4, 1995

The government shutdown did not stop the processing of VA home loans for many of our veterans. Loan Guaranty divisions that left their automated systems up and running during the shutdown were able to continue to provide appraisal assignment service. The many lenders who participate in our lender appraisal processing program were able to continue to receive appraisal reports directly from fee appraisers, make value determinations and close loans. Over the years, dedicated VA Loan Guaranty employees have helped make homeownership dreams come true for nearly 15 million veterans. It's reassuring to know that with our private industry partners and automation, we have the means to continue that fine work temporarily during a crisis.

Secretary Brown's Daily Message, August 30, 1995

As you are likely aware, there is a strong probability, given the position of the Congressional leadership on the appropriations bill, that there will be no agreement on FY96 funding in time to avert a shutdown of the federal government early in the fiscal year. As a result, a significant number of VA employees will likely be furloughed for a period in October. While we wait and hope for the funding picture to clear, we must prepare for this shutdown. In doing so, our paramount concern must continue to be our veteran patients and customers - minimizing the impact on their health care and benefits. I regret that such a drastic measure may be imposed on the most dedicated group of employees in government - VA employees. I hope this action, which would be so disruptive to the lives of so many good people, can be avoided. If not, rest assured that you will not be forgotten and I will do all I can to bring an end to this difficult time.

**SPECIAL SECRETARY BROWN'S DAILY MESSAGE, November 13, 1995**

The Federal agencies have been operating under a Continuing Resolution (CR) since October 1, 1995. The current CR expires at midnight on Monday, November 13, 1995. At this point appropriations bills for the VA and most other Federal agencies have not been enacted. Because there is a real chance that the Congress will not pass an acceptable CR by Monday, agencies have been advised by the Office of Management and Budget to review their plans for shutting down agency operations in the absence of appropriations and to inform their employees of the following:

**ALL EMPLOYEES SHOULD REPORT FOR WORK ON MONDAY, NOVEMBER 13, 1995. MONDAY WILL BE A NORMAL WORKDAY FOR THE FEDERAL GOVERNMENT.**

**REGARDLESS OF WHETHER A CR HAS BEEN ENACTED, ALL EMPLOYEES SHOULD REPORT FOR WORK ON TUESDAY, NOVEMBER 14, 1995 TO RECEIVE FURTHER INSTRUCTIONS.**

JESSE BROWN

Pay Slip Message

MESSAGE FROM SECRETARY JESSE BROWN (Dec. 5, 1995)

I am delighted that all VA employees are back to work continuing our mission of "putting veterans first." I want those of you who were furloughed recently to know that I believe each and every one of you provides an essential service for our nation's veterans and their families. And I'm thankful you have returned to work. I want to thank those of you who were on duty during the shutdown for your dedication and hard work. VA employees are special and truly know and live the meaning of service and compassion. I am proud of all of you.

## **IMPACT OF FEDERAL SHUTDOWN ON VETERANS BENEFITS/VA EMPLOYEES**

### **MEDICAL CARE**

Medical care will not be disrupted. No veteran will have his or her care delayed, deferred, canceled or otherwise adversely impacted as a result of shutdown activities.

### **VETERANS' BENEFIT PAYMENTS**

Excepted VBA employees at field facilities will continue to determine eligibility for benefits associated with other excepted VA activities (claims for burial, terminal illness, medical care), receive and process payments, manage issues involving government property and maintain automated records systems. Otherwise, new claims for benefits will not be processed.

In addition, if there is no appropriation as of Dec. 1 when the next benefits checks are to be mailed, these payments **WILL NOT BE MAILED** to veterans or other beneficiaries. These checks include disability compensation, pension and DIC. The number of individuals affected is as follows:

Compensation	2.5 million
Pension	787,000
DIC	301,000
<b>TOTAL:</b>	<b>3.58 million</b>

### **NATIONAL CEMETERIES**

NCS will continue to bury eligible veterans in national cemeteries.

### **IMPACT ON VA EMPLOYEES**

	<u>Excepted/Funded</u>	<u>Perform Shutdown Act.</u>	<u>Immed. Furloughs</u>
VACO	266*	49	3,404
Field	200,126	9	32,950

\*Includes Presidential appointees  
11/13/95

**Veterans Benefits Administration  
Clarification of Shutdown Impact**

In the event of a week long shutdown the following would occur:

- C&P checks scheduled to be delivered December 1, would *not* be delayed *if* a Second Continuing Resolution is enacted by November 22.
- C&P retro checks averaging \$13 million would be delayed for nearly 7,000 recipients.
- Education checks averaging \$10 million would be delayed to approximately 30,000 recipients.
- Insurance death claim benefits would be delayed to approximately 3,500 survivors at a value of \$19.2 million.
- Insurance dividend payments of \$18 million to nearly 45,000 veterans would be delayed.

Mr. MICA. Thank you, Mr. Brickhouse.

I would like to recognize now Shirley Chater, Commissioner of the Social Security Administration.

Welcome.

Ms. CHATER. Thank you, Mr. Chairman and members of the committee.

My written testimony has been presented to you for the record. With my time this morning, I would like to answer some of the questions about the number of Social Security Administration employees who were furloughed. I would like to tell you about the services that were maintained during the shutdown and the services, of course, that were interrupted.

On November 14, the Social Security Administration furloughed about 61,000 nonexcepted employees and retained about 4,800 excepted employees. The vast majority of those employees who remained on the job were directly involved in the processes involved in paying benefits to currently enrolled Social Security, Supplemental Security Income, and Black Lung beneficiaries. We also retained some employees who maintained records for those beneficiaries currently on the rolls.

Social Security continued to perform functions related, of course, to the protection of life and property, and all of the administrative activities necessary to support the excepted functions. I want you to know, however, that none of our Social Security district offices were closed.

Now, let me tell you about the suspensions. There were a number of agency functions that we suspended during the shutdown. I want to make it clear to you that Social Security never used the term "nonessential" to describe either the services that were disrupted during the shutdown period nor the employees who provide those services. Although the functions that were suspended did not, at that time, meet the definition of excepted activities under the statute, they are critical to the mission of Social Security, and we feel very strongly about that.

Now, if I can tell you about the work that was not done, I need to paint a context for you so that you understand how far behind we are. The Social Security Administration receives, on average, about 28,000 retirement and disability benefit applications every single day. We receive an average of about 53,000 applications for Social Security numbers every day. And every day we answer about 200,000 telephone calls on our 800 number. Every day we conduct approximately 2,700 hearings for claimants who appeal the denial of benefits.

Well, Social Security, during the shutdown, did not process applications for new benefits or Social Security numbers. We provided only an automated message on the 800 number, so we were not available to answer questions. And, of course, there were no hearings conducted during this 4-day period.

These numbers make it very clear that an appropriation lapse has a severe impact on Social Security's ongoing ability to properly administer the Social Security programs. If several days elapse in which no benefit applications are handled and no hearings are conducted, it could seriously impair the agency's capacity to process pending claims and appeals.

Because of our deep concern about the potential impact on service to the public, we were prepared to make appropriate adjustments in our initial SSA shutdown plan, if we suspected a prolonged lapse in appropriations. The President asked SSA to review its shutdown plan in light of the potential length of the shutdown. We were ready to act. We were ready to accept and process new claims applications.

I decided, at that point, should it come, I would expand the number of excepted employees effective November 20 and bring back 50,000 people, especially to our field offices and to the telephone centers. On the other hand, those not directly involved in paying benefits, or accepting and processing claims, would have remained on furlough. Because all Federal employees returned to work on November 20, I did not have to take this action.

In closing, I can say with confidence that Social Security implemented the shutdown in an orderly manner and in full compliance with the applicable statutes and directives and guidance from the Office of Management and Budget and others with governmentwide responsibility for ensuring the consistency of individual agency shutdown plans.

I would be happy to answer your questions.

[The prepared statement of Ms. Chater follows:]



**STATEMENT ON**  
**THE GOVERNMENT**  
**SHUTDOWN**

***BY***

**DR. SHIRLEY S. CHATER**  
**COMMISSIONER OF**  
**SOCIAL SECURITY**  
**BEFORE THE**  
**HOUSE COMMITTEE ON GOVERNMENT**  
**REFORM AND OVERSIGHT**  
**CIVIL SERVICE COMMITTEE**

**DECEMBER 6, 1995**

***FOR RELEASE ON DELIVERY***

Mr. Chairman and Members of the Subcommittee:

As we are aware, a lapse of appropriations for most Federal agencies, including the Social Security Administration (SSA), recently led to a temporary shutdown of many Government functions. I appreciate the opportunity to explain how SSA planned for this contingency and implemented its shutdown plans.

I would like to clarify that nowhere in either the statute or guidelines does the word "essential" appear. It is extremely unfortunate that this word was used during the recent furlough to refer to Federal employees as being "essential" or "nonessential" employees. In fact, the statute says that when there are no appropriations, all employees are furloughed except those performing emergency activities that include, among others, the provision of mandatory benefit payments and the protection of life and property. If we were furloughing only "nonessential" employees, no employee would have been furloughed because they are all essential.

#### Shutdown Plans

My testimony will generally address the questions you raised in your letter of invitation, beginning with a description of SSA's process for developing and implementing shutdown plans.

Office of Management and Budget (OMB) guidance requested that each agency develop an operational plan for an orderly shutdown in the event of a lapse of appropriations. SSA's contingency plan consists of individual plans, approved by the Commissioner, which are developed and maintained by Deputy Commissioner (DC) level components. If notified by OMB of a funding lapse, the Commissioner will activate the SSA Command Post, which will oversee the implementation of SSA's contingency plan and provide guidance. The Command Post, which is comprised of representatives of the Office of Personnel and each DC component, will immediately notify the DC-level component heads to implement their individual contingency plans.

I am attaching to my testimony a summary of SSA's procedures for shutdown and startup due to lapse of appropriations. This document contains more detailed information regarding SSA's shutdown plans. We informed OMB of our shutdown plan in advance in order to ensure consistency among Federal agencies in the interpretation and application of pertinent statutes.

We received a number of issuances providing guidance and information from OMB and the Office of Personnel Management (OPM). I can assure you that SSA has adhered to all guidelines and standards with respect to developing and implementing an appropriate contingency plan.

#### Impact of Furlough on SSA

You asked about the number of SSA employees furloughed, the number who continued working, the functions they performed, and the rationale for continuing those functions.

During the orderly shutdown effected on November 14, and consistent with our shutdown plans, SSA furloughed approximately 61,000 non-excepted employees and retained about 4,800 excepted employees beyond the lapse of appropriations. This was consistent with SSA's previously established shutdown procedures. The attached chart shows the categories of activities for which employees were retained and the number of excepted employees involved in those activities.

The functions these employees performed were mainly in direct support of paying benefits to currently enrolled Social Security, Supplemental Security Income, and Black Lung beneficiaries and to maintain essential records for those beneficiaries. It is our view that, because there were appropriations for the program costs of paying benefits, this necessarily implied authority to incur obligations for the costs necessary to administer those benefits. Other functions permitted under applicable statutes, including the Anti-Deficiency Act, during a lapse in appropriations related to areas such as protection of life and property and all activities necessary to support the excepted functions.

You also asked about the cost impact on SSA of the shutdown. While we have not completed our review of the cost to SSA of the shutdown, SSA's major cost was the cost of paying furloughed employees. We estimate that payroll costs for furloughed employees amounted to \$43 million for the four full business days during the shutdown period. Additional costs incurred include full rental costs for SSA facilities, even though most were minimally staffed, and costs for services which we paid for, but did not receive, such as training.

### Guidance to Furloughed Employees

With respect to the guidance provided to furloughed employees concerning such issues as pay and unemployment compensation, I am pleased to report that we were able to keep employees fully informed before, during, and after the furlough. OPM was helpful in providing us with information from the Department of Labor about unemployment compensation, and we were able to pass this information along to our employees.

As SSA updated its contingency plans, we provided written questions and answers about furlough issues to all employees before the start of the fiscal year. I updated this information by means of electronic mail messages to all employees as the possibility of a funding hiatus increased. A communications network of designated furlough contacts was established to disseminate information quickly throughout SSA via electronic mail, conference calls, and meetings.

We have also been operating a telephone hotline to provide employees with information and instructions before, during, and after the furlough. For example, during the furlough, the hotline assured employees that they would receive on time their pay due on November 21 and gave specific instructions for filing applications for unemployment compensation.

SSA has no subsidiary agencies. We do, however, provide 100 percent of the funding for the operations of State Disability Determination Services (DDS), which make disability determinations for SSA. Although DDS employees are State employees, their salaries are fully funded through SSA's appropriated funds. We notified the State DDS's of the impending shutdown and informed the Governors we could not fund DDS operations for the shutdown period.

### Impact of Prolonged Shutdown

Finally, you raised several questions regarding our assumptions about the length of the shutdown, and the effect of such assumptions on decisions as to which functions should be continued during the shutdown period.

Before addressing these questions, let me briefly mention some workload statistics to put in perspective the scope of SSA's activities. These activities represent basic services to the public--services that were denied to them during the shutdown period. For example:

- o We receive an average of about 28,000 retirement and disability benefit applications per day;
- o We receive an average of about 53,000 applications for Social Security numbers per day;
- o An average of about 200,000 calls per day are made to our toll-free 800-number; and
- o We conduct about 2,700 hearings per day.

Although a very brief shutdown only slightly disrupts the services we provide, I think it is obvious that an appropriations lapse of one to two weeks would cripple SSA's ongoing ability to properly administer the programs for which it is responsible, and could seriously impair its capacity not only to distribute accurate payments to current beneficiaries of all of its programs, but also to process pending claims and appeals.

Although we did not make any specific assumptions about the length of the shutdown, our contingency plan provided for a range of appropriate adjustments we could make in the event of a prolonged shutdown. Thus, when the President asked that SSA review its shutdown plan in light of the length of the shutdown, we decided to implement a phase of the plan that expanded the number of excepted employees by about 50,000 effective November 20, in order to ensure that SSA could accept and process new claims applications. Of course, since the shutdown ended and all employees returned to work on November 20, we did not have to implement this decision.

### Conclusion

I deeply regret any hardship or inconvenience which members of the public and SSA employees may have suffered as a result of the shutdown. However, I believe that SSA implemented the shutdown in an orderly manner and in full compliance with

appropriate directives and guidance from OMB. Obviously, in the interest of the public we serve and the employees who provide the services, I want to express my sincere hope that we will not have to implement shutdown procedures in the future.

Attachments

## Social Security Administration

## PROCEDURES FOR SHUTDOWN/STARTUP DUE TO LAPSE OF APPROPRIATIONS

The Office of Management and Budget (OMB) guidance requires that each agency develop an operational plan for an orderly shutdown, in the event of a lapse of appropriations. SSA's contingency plan (CP) consists of individual plans which are developed and maintained by Deputy Commissioner (DC)-level components. If notified by OMB of a funding lapse, the Commissioner will activate the SSA's Command Post, which will oversee the implementation of the Agency CP and provide guidance. The Command Post (comprised of a representative from the Office of Personnel and each DC component) will immediately notify the DC-level component heads to implement their individual CPs.

The following are basic steps to be used by each DC-level component to activate individual CPs in the event of a shutdown. (More specific guidelines are provided in the SSA AIMS 17.01):

**IMPLEMENTATION****General**

- o Select, immediately, a minimum number of support staff to be retained to perform work authorized by law during a lapse in appropriations. The remainder of employees will be furloughed.
- o Notify the Office of Systems of component telecommunications requirements, as soon as the number of support staff has been determined.
- o Provide, immediately, to the Office of Personnel (OPE), Office of Human Resources (OHR), the names and number of employees to be retained and/or furloughed. This list should include the employees' retention/furlough status, SSNs and timekeepers' numbers.

--Managers should also maintain a **separate** list with employee home telephone numbers and addresses.

--Managers should notify employees that they are either excepted or nonexcepted from the furlough.

- o Immediately notify those employees, verbally, who will be released and inform them of their rights and responsibilities.
- o OPE will use the public address system at Headquarters to convey information regarding lapsed appropriations and the release of employees scheduled to be furloughed.
- o DCs with field components will advise them to implement their individual CPs.
- o Terminate all work activities not authorized by law during a lapse in appropriations, immediately.
  - A checklist of basic functions/activities is provided in SSA's Administrative Instructions Manual System 17.01 (Contingency Planning, Policy and Procedures--Funding Lapse) to determine which functions are authorized and which functions are not authorized during a lapse in appropriations.
- o Cancel, immediately, scheduled conferences/meetings, and discontinue training not authorized by law during a lapse in appropriations.
- o Advise employees in travel status to immediately return to duty stations; no further travel will be authorized.
- o Cancel, immediately, overtime and compensatory time, unless authorized by the Commissioner for excepted functions (via the Command Post).
- o Notify, the Command Post, as soon as possible, when individual component CPs have been fully implemented.

#### Specific

DC-level CPs contain action steps unique to the mission of the component. For example:

- o The Deputy Commissioner for Finance, Assessment and Management is responsible for determining which services are needed for continuing functions in each location (e.g., lights, water, air-conditioning, etc.), and coordinating shutdown of facilities.

- o The Deputy Commissioner for Human Resources is responsible for the processing of furlough actions (if a continuing resolution or an appropriations bill is not passed within a few days of furloughing employees).
- o The Deputy Commissioner for Operations is responsible for ensuring that appropriate signs/notices are posted at public contact offices, stating that offices will be open to continue to carry out activities authorized by law, on a limited basis.
- o The Deputy Commissioner for Programs, Policy, Evaluation and Communications is responsible for notifying the Federal, State, local and public agencies (dependent upon SSA for information) of the cessation of SSA activities.
- o The Press Office is responsible for maintaining contact with the news media to keep the public and furloughed employees informed.
- o The Deputy Commissioner for Systems is responsible for coordinating any equipment shutdown/startup (including telecommunications equipment) to avoid power surges, systems overloads, etc.

#### **RESTART/RESUMPTION**

Once the word is received from OMB to resume operations, the Command Post will communicate this to the DC-level component heads, who will implement the startup/recall provisions of their CPs.

- o The Press Office will immediately notify the media to announce resumption of SSA's operations.  
  
--Employees would already know to listen to certain radio and TV stations for the announcement.
- o Office heads will notify subordinate managers, by telephone, who will notify employees of date and time to return to work.
- o As startup functions are resumed, managers should, immediately, relay information upward to the next level of command; the DC-level component heads will, in turn,

communicate this to the Command Post.

--Any significant problems should be reported promptly to the Command Post.

- o The Command Post will be dismantled, as soon all DC-level components have reported attainment of a normal level of operations.

Social Security Administration  
Fiscal Year 1966  
Phase I -- CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1. Law enforcement activities		5
2. Protection of life and property		111
3. Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs		4,418
4. Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus		62
5. Services of officers holding offices established by law		11
6. Activities required for orderly phase-down and suspension of operations		173
Total number of staff to be retained		4,780
Number of staff to be furloughed		61,415
TOTAL STAFFING		66,195

Mr. MICA. I thank you and each of the panelists for your testimony this morning and for the comprehensive coverage each of you provided the subcommittee with how you approached this question of a shutdown.

I would like to begin some of the questioning by asking if, in fact—let's see, we have several different plans for shutdown. I have an HHS plan here which I guess is basically a two-page plan. Maybe there is more to this. You have 60,000 employees, and I believe 27,000 were deemed essential. Then I have another plan here which is a little bit thicker, from the Department of Labor, and this one is 184 pages. You have a total of 16,000 employees, of which somewhere in the neighborhood of 700 were deemed essential and retained. It seems to be sort of a wide disparity.

Maybe I could ask HHS, is this your full plan or do you have something additional?

Mr. BROADNAX. Mr. Chairman, the document that you are holding, the two-page document, really acts more as a summary. The detailed plan behind that summary is approximately 30 pages. It still does not come to the 184 pages that the Department of Labor has. I would go on to say that, in this particular case, I think the difference is probably in the details, in terms of the difference in the two roles and functions, at least at some level, that the two departments play.

Mr. MICA. Well, the other question I have for both of you, now, you know, the shutdown doesn't appear to be any new idea. I think we had testimony from Mr. Glynn, and maybe Mr. Muñoz also spoke to it, shutdowns are not new. I think in 10 of 12 years we didn't have appropriations measures.

But I have a memo dated July 26, which doesn't say anything about whether the Speaker gets to speak with the President on the plane or not, but, in fact, it is by Alice Rivlin, and it says, "Planning in light of appropriations actions," very clearly directing you all, on the 26th, to come up with plans. It says, "we recognize that there may be delays, or reflects sharp disagreement with the President's requests, and that there may not, in fact, be funding."

Did each of you see this, each of you receive this? It's my understanding, too, that you were to respond by September 5; is that correct? Did everyone here respond? I'm getting affirmative head shakes. So it wasn't anything, first of all, new; and, second, that there were some very direct actions by the administration to plan for the shutdown.

My question is, do you feel this is adequate? I don't see a great deal of distinguishing between what is essential and nonessential, either with functions or employees, and I see a great disparity between the plans that have been developed.

I would like you to respond. Maybe Mr. Broadnax, you could respond, and Mr. Glynn. And the others, feel free to comment.

Mr. BROADNAX. Sort of back to where we stopped with the comparison between the two plans, Mr. Chairman. If you look at the Department of Health and Human Services, what we did was to apply the guidelines as outlined by the law and the OMB guidelines that were issued, and applied that to the work of the department from the bottom to the top.

After applying the law and the guidelines, with the guidance of OMB in that process, we then came out with a number of people that we felt that we could furlough, in the first instance, and the number that would be required or excepted, as it were, to carry on the work of the department, in the first instance, but understanding, as outlined in our plan, that this was an evolving process, so the number we began with might change after a period of time, depending on the length of the shutdown.

Mr. MICA. Mr. Glynn, how do you see this? Is this adequate? Do you see these guidelines as adequate? You prepared a more comprehensive response.

Mr. GLYNN. Well, as I indicated and as you mentioned, the Department of Labor, along with several other agencies in our Appropriations Subcommittee, has had numerous opportunities, over the last 10 or 15 years, to prepare shutdown plans because of the difficulty of getting our appropriation approved by October 1.

So we found the guidance issued by OMB adequate. I think perhaps it would be fair to say that, over the years, a certain amount of boilerplate has been developed. In terms of how the shutdown plans have been developed by our department and reviewed by OMB, we chose to submit to OMB a full plan, with all the boilerplate attached. It sounds like, at HHS, they recognized that perhaps OMB had a certain amount of this because it has been done over the years.

So I'm not sure that there's as much difference, in terms of the two documents, as it might appear at first blush.

Mr. MICA. The other question I had is with some of the rationale for closing down certain functions, and then with some of the statistics that have been quoted. Mr. Broadnax, did you say that there were 1,500 or 15,000 deadbeat dad requests a day?

Mr. BROADNAX. Fifteen to twenty thousand per day.

Mr. MICA. Per day. That would be 3 million a year?

Mr. BROADNAX. This is through the referral service.

Mr. MICA. Three million a year?

Mr. BROADNAX. Well, these are calls coming in. So you could have, you know, a call every day about the same person, presumably, but that's the number of calls coming in.

Mr. MICA. Let me, if I may, go to the VA here. Mr. Brickhouse, there seem to be some changes in what was essential and non-essential, as far as what the administration considered essential on one day versus another day. I believe the President decided to call back 1,700 VA field staff and change this after your initial determination.

Did you have direction from the administration to make these changes, or did you initiate this?

Mr. BRICKHOUSE. Mr. Chairman, when we developed our plan that was submitted to OMB at the start of the shutdown, we outlined the numbers that we thought were appropriate. However, in that planning, we planned for a shutdown perhaps in the neighborhood of 3 or 4 days, at maximum. What happened on the last Friday of the shutdown, when we began to look at our activities, we recognized that perhaps, if this shutdown was going to go into Monday of the next week, that we felt it appropriate to identify and bring some additional people in.

Mr. MICA. So you initiated that request rather than vice-versa? It was a request to the administration and the President?

Mr. BRICKHOUSE. We initiated the request, yes.

Mr. MICA. And did any of you request changes as far as essential and nonessential? You did, Mr. Robinson?

Mr. ROBINSON. Yes, sir, we did.

Mr. MICA. What was that?

Mr. ROBINSON. Well, similar to the VA, we reviewed our shutdown plans, which, as indicated, have been longstanding across the government, in light of the guidance that we received from OMB, and we submitted a plan that indicated a certain nature of flexibility, because, based on the experience of the government, a short shutdown had been the experience that our agency had been through and the government had been through.

Our plan called for us to review, based on the length of the shutdown, and we had initiated discussions during the week of the shutdown with OMB, petitioning them to modify our plan.

Mr. MICA. Since the last shutdown, we have Defense and Treasury; Postal has been passed. We have seven appropriations bills in place. Have there been any additional requests from either OMB or from the administration to redefine what is essential or non-essential? If we get into a second shutdown, has there been any request to redefine the terms? Are any of you aware of anything?

Mr. GLYNN. Mr. Chairman, I would say OMB has asked us to review the success and the lessons from the first shutdown, and make any appropriate amendments to the plan, which does not speak directly to the question, but we haven't had to.

Mr. MICA. Did you have a deadline for submitting that?

Mr. GLYNN. I think it is due a week from tomorrow.

Mr. MICA. A little close, but I guess we're looking at December 15th as the next possible day. That is a week from tomorrow, next Thursday.

Mr. GLYNN. Yes. Actually, I have the memo with me, if you want to wait 1 second.

Mr. MICA. I think it is important that we find out what steps are being taken to see what services should be continued, what functions should be continued, what personnel, and how these matters should be handled.

Mr. GLYNN. I'm sorry. It is due to OMB on December 10th.

Mr. MICA. December 10th. Well, I have some additional questions, but I don't want to take all the time. I will yield now to the ranking member, Mr. Moran.

Mr. MORAN. Thank you, Chairman Mica. The thing that I found most troubling and disappointing about the way in which the executive branch reacted to the shutdown was the bizarre situation you created on the first day of the shutdown, with everyone coming in to work and then being told whether or not they were essential and being sent back home again.

As far as I'm concerned that was inexcusable and, in fact, we knew by the end of the prior week whether or not people should be coming in to work.

It seems to me, when there was clear indication and plans being put together in the last summer of this year, in July and August, that we may very well reach a situation that could cause a govern-

ment shutdown and, clearly, that very short-term continuing resolution that was passed as of October 1st indicated we had a potential problem coming at the expiration of the first continuing resolution, there should have been contingency plans made for the first day when you would have lapsed appropriations; and it appears that there were not.

I just can't imagine why you would create a situation where employees came in and were told to go back home again. It is demeaning, it is amateurish, it is irresponsible, et cetera.

Now, if you disagree, tell me, but I would like to know how that situation developed at some of the larger agencies, and why—why there were not contingency plans made by OMB and the White House, and made available to the agencies and, if there were, why they were not carried out.

Let's start with Dr. Broadnax from the largest agency, I guess, represented here, in terms of employees, a substantial number of whom came in first day on Monday and were sent back home again. Why?

Mr. BROADNAX. Congressman, there are roles for people to play during that 3-hour period that you are talking about when people came back in, and people secured their various areas depending on the work that they were carrying out during that 3-hour period.

People weren't just coming back in and sort of standing around wringing their hands, as it were, but were actually working to secure the areas where machinery was involved, or secure machinery, and make other arrangements to get us into the full shutdown.

The full shutdown began 3 hours subsequent to those employees having arrived, carried out their tasks and duties, and then were sent home.

Mr. MORAN. What you are telling me is, for the first 3 hours of the day, their services were considered essential, even though there was no reimbursement for that effort available at the time.

See, the problem is, if we are going to operate within a strict legal construct here, the only way you can justify any members of the Federal work force going to work is to consider them essential, and we have a definition of essential: the safety of human life and protection of property. I guess the latter is probably what you used.

You would have to have some type of legal opinion, to get around the Antideficiency Act, that these people were, at some point, essential. In other words 100 percent of your employees you would have to legally justify were essential at the time, for those 3 hours, and then, all of a sudden, they are not essential.

I don't know why that wasn't done the end of the work week, rather than waiting until not the 11th hour or the 12th hour, but 12:05, after the expiration period.

Mr. MUÑOZ. Could I?

Mr. MORAN. Yes, I would like for you to, Mr. Muñoz.

Mr. MUÑOZ. Sir, let me just say that I think OMB did an excellent job of having a contingency plan, because we were on hold. We were informed by OMB—by Alice Rivlin in particular—that we were to not notify anyone of a shutdown until we received notice, and that could have been on Monday, we were told, so be on hold for a possible Monday notification, or not until Tuesday.

Now, I don't know what went into the thinking as to whether or not to not do it on Monday so that people don't have to come back on Tuesday but, as I understand it, OMB very much respected the prerogative of Congress to decide whether or not, after midnight Monday night, there was going to be—before midnight, there was going to be anything.

A perfect example of that was, in fact, when the shutdown was terminated, as we understand, in a period of a very few hours, settlement was arrived at between the President and the Congress on terminating the shutdown. I believe that was what was the thinking.

Second of all, there are certain legal procedures that need to take place when you get into an orderly shutdown. Coming back Tuesday morning was very positive for the Treasury Department and, I may add, the legal authority that defines excepted and non-excepted also says that you can maintain people for an orderly shutdown.

We read that legally, based on our General Counsel's opinion, that, for the whole morning on Tuesday, the hours that it took for people to close down the files and make sure that there is no risk or exposures from their retiring from work.

Second, we have a legal obligation to give furlough notices in writing, and have some indication of receipt of notice. All that was taken on after we knew that the Congress and the President decided not to agree that there was going to be some funding.

We think that that was probably the best way to approach it, and we felt very comfortable. By Tuesday afternoon, there was a good, clear communication as to who was going to stay and who wasn't.

At the Treasury Department, for example, sir, we have some functions that are funded because they have a revolving fund, or have other means of appropriations that would not be subject to this furlough.

Nevertheless, because of the media communications, employees sometimes got confused as to what is overridden and what isn't. We made it very clear on Tuesday morning, and we made very effective use of Tuesday morning to hand out the furlough notices and to make further communications to the employees.

Mr. MORAN. You just did an excellent job of defending OMB and clarifying the situation, but there are some problems with it.

For one, we had a different situation on the Sunday when we terminated the shutdown, and that was not comparable to what happened on Monday. Presumably, the White House knew whether or not it was going to veto the continuing resolution it received, and it certainly knew what the continuing resolution was going to look like.

Now, I am not going to ask you that. That is OMB's job, to explain why they didn't act or why the President didn't give some earlier indication, but I think it is a different situation that occurred on the Sunday when the government shutdown ended.

I have the sense that some employees, even on Monday, knowing that anybody that had been watching it closely would have known that there was not going to be work on Tuesday for at least 40 per-

cent of the work force, some of them did not know whether they were essential or non-essential.

Now, did everyone in your respective agencies know whether they were classified essential or non-essential on Monday? Is there anyone who did not?

[No response.]

Mr. MORAN. Every agency represented here informed their employees as to whether they made the cut or not? That is true? Is there any exception?

[No response.]

Mr. MORAN. If not, forever hold your peace, I suppose. You wanted to say something further?

Mr. MUÑOZ. Sir, the clearest indication to an employee is when, in fact, they receive the furlough notice. That is the ultimate and clearest. You don't want to wait until that instant happens.

Mr. MORAN. That is for sure.

Mr. MUÑOZ. We did have communications beforehand, so that there would be some clear communications on that; but, according to law and for all practical purposes, especially when you have a very large agency spread around the country, the clearest indication was that Tuesday morning. It was an effective use of that Tuesday morning, to give the written notice and further instructions of how to shut down their offices.

Mr. MORAN. It is just that, since it was so likely, by the end of the prior week, it seemed to me, the planning should have taken place certainly by that Friday through the weekend, and no question about it, on Monday.

The other thing I want to get into, although I don't want to take time from my colleagues, but I think an important area of consideration is whether those employees who had to stay at work, getting reimbursed the same as their colleagues who were not at work, whether there was ample communication so that those who were on the job knew how to carry out not just their own function, but the necessary functions of their colleagues.

That is the kind of forward planning that seemed to be necessary. I have a lot of Federal employees, as you know, in my district. I don't have a sense that much of that took place, that it was almost a shock to the vast majority of Federal employees that this happened; they were really unprepared, and a lot of the people who were left on the job didn't know how to handle the responsibilities of their colleagues who were not on the job. I think there are problems.

The best way to deal with this is to simply make sure everybody stays on the job next time, and we don't have one of these inane furloughs and, if people are going to get reimbursed—which they certainly should—then they be reimbursed for work that they performed in the interim, and we are going to try to get that legislation through.

I do think there are some problems in the forward planning of this situation which, at some point in advance of when it occurred, was inevitable. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentleman and yield now to Mr. Bass.

Mr. BASS. Thank you very much, Mr. Chairman. To follow on the very last comment that Mr. Moran made, I think it can be observed

that the issue of giving an employee compensation for time not served on the job further exacerbated the humiliation of being deemed non-essential and not going to work, then getting paid for not going to work.

My question is a general question that any of you can address, if you wish.

That is, do any of you have any specific suggestions for congressional action that might clarify for you the definition of "essential" versus "non-essential," or even redefine the term, to establish better procedures for implementing a shutdown, which may, in some instances, be unavoidable, in order to address Mr. Moran's question about what happened to the employees during a specific period of time, to establish consistency from one agency to the next so that there aren't different standards adopted in different agencies and, last and, perhaps for some of us, most importantly, to mitigate—to attempt to mitigate—the impact—or the political impact—of a shutdown so that a shutdown cannot, to the extent possible, be used to make a political statement?

With that, I will just turn it over to anyone who wishes to address those.

Ms. CHATER. I would like to address the question, if I might, sir, from the sense that it is probably going to be difficult to be thoroughly consistent across agencies, because the nature of our work differs so much.

For Social Security, for example, where we are an extremely customer-focused agency, we had appointments to take care of, appointments to cancel, and now appointments to make up, in a very one-on-one kind of activity. Our work is, therefore, different from another agency that perhaps doesn't deal with the public in a face-to-face way.

While I think consistency across government is a good idea, I just suggest that it might be difficult, based on the work we do and how we do that work.

Mr. MUÑOZ. One suggestion I might have is, the thing that was constantly in our mind at Treasury when we were planning this was the criminal penalties that accompany any running afoul of the Justice Department guidelines on this issue.

Given that there are criminal penalties, you run the risk, on the one hand, that if you read the opinions too broadly, so that you try to put everything under protection of property, you run the risk of running afoul of those criminal penalties.

If you read it too narrowly, then you run into some of the examples that were cited earlier this morning in terms of the public being harmed in some fashion because they didn't fall within the guidelines—the criminal guidelines.

Mr. BASS. How many prosecutions have occurred under that, since its inception?

Mr. MUÑOZ. Well, I am sure that, if there have been any, they are not here today. [Laughter.]

I am not aware of any. Although, as a lawyer, I know that these are very serious things and our good General Counsel that night at the Treasury Department kept us aware that is the ultimate law that we have to live by.

Mr. BASS. If nobody else has any comments, I will yield back.

Mr. MICA. I thank the gentleman, and yield now to Mrs. Morella for a question.

Mrs. MORELLA. Thank you, Mr. Chairman.

I'm curious—and, again, I would ask all or any one of you, or multiples of whatever, who might want to respond. I am curious about whether or not your shutdown plan would be altered if the shutdown occurred because of the debt ceiling versus the lapse in appropriations. Would it be different, or would it be the same? Have you had any instructions from OMB or Justice on that?

Mr. MUÑOZ. We have had no instructions, but those would be two very different situations.

Mrs. MORELLA. You anticipate that it would be a different procedure?

Mr. MUÑOZ. The shutdown that we went through had a constitutional basis, based on Congress's prerogative to appropriate or not appropriate and, if appropriations were not granted, then we can really not run afoul of that, lest we face criminal penalties.

If the government shuts down for another reason—a liquidity point, it doesn't have cash—my sense is—and I don't know that we would ever reach that point—my sense is that you don't have the same guidelines, the constitutional basis of appropriations. We may have appropriations appropriated to us but, if there is no cash, my sense is that the thinking would go differently.

To answer your first question, we have not received any guidance on it, but instantly I see a very different standard by which you would develop your plans.

Mrs. MORELLA. A difference. Would you all agree, first of all, that you have not received any guidance on it?

Mr. MUÑOZ. Ma'am, can I just underscore, then, the point that you made, and that some Members here have made also? That is because the guidelines is not essential versus non-essential. If it were, maybe there would be some great similarity. The guidance is really whether you are excepted under the law or not.

Mrs. MORELLA. I don't know whether it would be a greater impact or not. I mean, that would be an interesting point, also, for any one of you to comment on.

Maybe I will address this one to Mr. Robinson. It deals with the recall question. You indicated that there was a plan in place that acknowledges the need to recall additional staff if the shutdown continued beyond a week, and yet you had to go to OMB to discuss recalling people.

Were these recalls in your initial plan? Were they reviewed by OMB prior to the week of November 13th. Because what I sense you are saying is that OMB approves our plan and then, if we need to implement it, or part of it, or need a recall, we have to go back to OMB to get another part of it approved. Is this sort of like over-kill?

Mr. ROBINSON. What I meant to indicate, Congresswoman, is that our plan originally called for flexibility dependent upon circumstances. That is part of our plan that, as the circumstances unfold, we would reassess what needs we would have related to property and safety, and modify our plan accordingly.

As the week proceeded, as I indicated, we determined that, in fact, that was the case and that we needed to modify our plan. In

doing so, we had to submit it to OMB, and that was the process that we had undertaken.

Mrs. MORELLA. Do you think that is the most expeditious process?

Mr. ROBINSON. Well, I have been in government 2 years now. It is the only process I am aware of. [Laughter.]

I don't mean to be flippant in my answer, but there certainly is a tremendous amount of oversight in terms of what we do, not only in terms of our necessity to work with the Office of Management and Budget, but our necessity to work across the board.

It is, I think, important that we not only address the law, but we address the requirements of the personnel issues that are involved and, certainly, the Office of Management and Budget has the expertise and the responsibility in that area.

Mrs. MORELLA. Yes?

Mr. MUÑOZ. Ma'am, could I just add something?

Mrs. MORELLA. Yes, certainly.

Mr. MUÑOZ. In the last hypothetical, you posed the question of would the plans differ any if there were a shutdown because of a debt ceiling issue.

As I said, we have received no guidance on that, but I want to re-emphasize, for those agencies that have appropriations already, the debt ceiling really is not an issue as to whether you would face a shutdown or not. It is a question of we still would have authority to obligate the government to pay for the activities that take place; so we don't anticipate the hypothetical that you pose to be an issue.

Mrs. MORELLA. It might be wise to have some kind of a tentative plan that is thought about when you get the OMB regulations with regard to reporting for 3 hours on that morning, et cetera. That is all spelled out in the OMB statement that was made, or was sent to all of you.

I guess, Mr. Brickhouse, in regards to the 1,700 employees who are being recalled to receive and come up with date benefit claims, you stated that Veterans' Affairs determined that the potential for adverse effects of delays in receipt of applications qualified for an exception under the Antideficiency Act.

I wondered if you might elaborate on why the Antideficiency Act allowed for this recall and why the determination was not made earlier? You began planning in August. Plans were set by September 30th. The shutdown happened in November, and you had to recall 1,700 people. I am just kind of mystified by it.

Incidentally, your percentage of furlough was, I think, the lowest, wasn't it?

Mr. BRICKHOUSE. Yes. That is primarily because our primary mission in the VA is to deliver health care and, in those areas, we elected not to defer or delay any treatment in our hospitals that we have, the 72 hospitals that we have across the Nation.

Mrs. MORELLA. You could not anticipate that?

Mr. BRICKHOUSE. In regard to your question, if I understand it correctly, we did not anticipate initially the need for those 1,700 people. As I mentioned earlier, as we moved through the week and saw this shutdown going longer than we had previously anticipated, we decided that it was necessary to bring in people to make sure that they received and logged in claims.

Now, it is a legal requirement, that we must date-stamp claims that veterans submit to us, so we felt that it was necessary to bring in those people to do that, and also answer questions and also deal with telephonic inquiries about these matters.

We also felt so strongly about this that we asked OMB for permission to, in essence, change our numbers. You are exactly right, that they did come back and tell us that they felt that this was an excepted function under the Antideficiency Act.

To answer your question, no, we did not anticipate it. However, as we moved through the shutdown, we identified some areas of concern in that area.

Mrs. MORELLA. Then you went to OMB. Did you have to go to Justice, too?

Mr. BRICKHOUSE. I think the Justice Department collaborated on this particular issue, yes.

Mrs. MORELLA. With OMB. You determined that as the result of discussions with them? Do you discuss it with them or you tell them?

Mr. BRICKHOUSE. Yes, it was primarily through telephonic discussions with OMB, and we submitted written material on it, too.

Mrs. MORELLA. Fine.

Mr. BRICKHOUSE. I might add that we did not find that it was any problem for us to have dialog with OMB. I think, as I recall, that decision was made in a matter of hours, if you will, from the time we submitted the request.

Mrs. MORELLA. I see. I am just trying to understand the process and the anticipation of what concerns would arise and whether or not you have an extra layer to go through and how well it is planned. Thank you.

In the interest of time, I will yield back, Mr. Chairman. Thank you.

Mr. MICA. I thank the gentlelady, and recognize Mr. Horn from California.

Mr. HORN. Thank you very much, Mr. Chairman. I have basically two questions, and I want to followup on Mrs. Morella's question, which was an excellent question in terms of a liquidity crisis, cash-flow crisis, with regard to the debt ceiling.

One, Mr. Chairman, I would like to put a letter in the record that a number of us wrote the President a month ago, that said if we are serious about controlling the debt ceiling, we ought to freeze nonessential travel, nonessential purchases, and deal with the not absolutely essential workers.

Obviously, health care in the VA and others would be absolutely essential workers, so you would not have to worry about that.

Perhaps that situation has passed. Perhaps it has not. I think it is very clear, Mr. Muñoz, that a debt ceiling shutdown would be a lot more serious, I think, than what we've gone through. You would not be making up for lost pay. You couldn't afford to do it. Am I wrong on that? Is that your hunch or inclination?

Mr. MUÑOZ. Sir, on the hypothetical that was posed, there is an assumption that the debt ceiling would also create a shutdown possibility. The possibility of that is very small, because that would be a discretionary call.

I am going to look to my legal counsel here, if he wants to correct me, but once we have appropriations in place, we have a responsibility to continue working. If there is a liquidity question, then the question is as to whether or not or when you are going to get paid, but we still have an obligation to continue working, and there is an obligation of the government to pay.

There would not necessarily have to be a shutdown of government operations.

Mr. HORN. Well, there is something, Mr. Chairman, you might want to consider. It seems to me it is an important question and you ought to give some guidance on that.

Let me get to my two basic questions, and I would like to ask this of all of you, since you are under oath. Either directly or indirectly, prior, during, or since the shutdown, did any member of the White House staff influence what categories of workers you stated were non-essential or essential, and that includes OMB staff, who said, "We are getting the word from the White House"? Anybody? Let's just get a "Yes," "No" answer.

Mr. BROADNAX. No.

Mr. HORN. No.

Mr. ROBINSON. No.

Mr. HORN. No.

Mr. GLYNN. No.

Mr. HORN. No.

Mr. BRICKHOUSE. No.

Mr. HORN. No. How about you, Mr. Muñoz?

Mr. MUÑOZ. No.

Mr. HORN. No. Commissioner Chater?

Ms. CHATER. No.

Mr. HORN. All right. You are probably the wrong people. We ought to be asking the Cabinet officers that. [Laughter.]

Now, for the hearing record, I would just like to have filed, of those on the staffs reporting to those at and above the bureau chief, administrator level, institute head level, comparable levels, for the categories such as public affairs, management, human resource personnel, general counsel, et cetera, the traditional staff agencies, I would like to know, one, how many people are qualified at that level, what percent were determined non-essential or essential?

Of those in direct contact with the customer taxpayer, such as Social Security Administration and the Immigration and Naturalization Service, how many were actually furloughed? I need an absolute number of how many are there and then what percent was essential, non-essential, in terms of direct customer contact.

Based on 30 hearings I've held this year on the Government Management Subcommittee, there is no doubt in my mind that, since President Eisenhower, regardless of party, we have had a thickening of government, as Professor Light calls it, and we have a bloated staff level at the commissioner, the bureau chief level, on up, that you would not have recognized 30 years ago.

It does not relate to increased appropriations, it does not relate to a growth in population. It just relates, regardless of party and power, to the bloated nature of staff that, frankly, are crippling you more than helping you.

I would like to get that in the record, Mr. Chairman.

Mr. MICA. Mr. Horn, how did you want them to respond?

Mr. HORN. I just want them to respond in writing.

Mr. MICA. OK.

Mr. HORN. We will put it in the record.

[The information referred to follows:]

INSERT FOR THE RECORD, PAGE 83, LINE 1813

**SOCIAL SECURITY ADMINISTRATION**  
EXCEPTED AND FURLOUGHED EMPLOYEES  
STAFF AND DIRECT CONTACT POSITIONS  
NOVEMBER 1995 SHUTDOWN

COMPONENT	TOTAL POSITIONS			STAFF POSITIONS' Number (and Percentage)			DIRECT CONTACT POSITIONS' Number (and Percentage)			
	EXCEPT	FURLO	TOTAL	EXCEPT	FURLO	SUBTL	EXCEPT	FURLO	SUBTL	SUBTL
OFF. OF COMMISSIONER	6	75	81	6 (7.4)	75 (92.6)	81	0 (0)	0 (0)	0	0
OFF. OF FINANCE, ASSESSMENT AND MANAGEMENT	227	2524	2751	227 (9.9)	2062 (90.1)	2289	0 (0)	462 (100)	462	462
OFF. OF HUMAN RESOURCES	35	635	670	35 (5.2)	635 (94.8)	670	0 (0)	0 (0)	0	0
OFF. OF LEGISLATION & CONGRESSIONAL AFFAIRS	8	63	71	8 (11.3)	63 (88.7)	71	0 (0)	0 (0)	0	0
OFF. OF OPERATIONS	4248	46412	50660	5 (3)	1553 (99.7)	1558	4243 (8.6)	44859 (91.4)	49102	49102
OFF. OF PROGRAMS, POLICY, EVAL. & COMMUNICATIONS	38	8347	8385	11 (9)	1147 (99.1)	1158	27 (negligible)	7200 (100)	7227	7227
OFF. OF SYSTEMS	185	2743	2928	185 (6.3)	2743 (93.7)	2928	0 (0)	0 (0)	0	0
OFF. OF GENERAL COUNSEL	27	363	390	27 (6.9)	363 (93.1)	390	0 (0)	0 (0)	0	0
OFF. OF INSPECTOR GENERAL	6	253	259	6 (2.3)	253 (97.7)	259	0 (0)	0 (0)	0	0
AGENCY TOTALS	4780	61415	66195	510 (5.4)	8894 (94.6)	9404	4270 (7.5)	52521 (92.5)	56791	56791

Employees in positions such as management, public affairs, human resources, systems support, legal, etc.

Employees in positions requiring direct customer contact.

Mr. MICA. I think we could spend the rest of the day doing the calculations here. [Laughter.]

I appreciate your understanding. As we wrap up this panel, I have a couple of questions.

First of all, Mr. Glynn, under DOL, you estimated the cost at \$7.3 million. Was that for personnel alone? I ask that question, because each of you incurred costs and you paid people after the fact.

I notice that the Office of Personnel Management has released a guideline as far as the subject of pay and leave treatment of employees affected by a lapse in appropriations, and this guideline allows for payment of overtime not worked.

It is bad enough that they did not work in the first place, but got paid, or were not allowed to work; but I wonder, Mr. Glynn, was any of this \$7.3 million paid in overtime?

Mr. GLYNN. I am not aware of any, Mr. Chairman, but we would be happy to double check.

Mr. MICA. Has anyone paid overtime since, according to these guidelines, that we pay overtime for not working in the time that we did not work in the first place?

[No response.]

Mr. MICA. I would like each of you to check that. I think it would be interesting.

[The information referred to follows:]

The Social Security Administration has not paid overtime to any employee for overtime work not performed during the furlough period.

Mr. MICA. Also, as far as VA is concerned, Mr. Brickhouse, it is my understanding that you kept on all field people in the hospitals, and there was no differentiation between different types of personnel activities there. For example, while you had some claims processors for disabled veterans who were not kept on, the gardeners at the VA hospitals were, in fact, deemed essential.

Mr. BRICKHOUSE. Congressman Mica, if I may, we did furlough in excess of approximately 20,000 people in our health care delivery system.

Mr. MICA. I have reports that gardeners and lawn care personnel were kept on and claims processors for disabled veterans were furloughed. Of course, I guess they were called back. Can you check that for us?

Mr. BRICKHOUSE. Sure. I would be glad to.

[The information referred to follows:]

Over the past 10 years, significant numbers of facilities throughout the Veterans Health Administration have contracted out for their gardening and lawn care activities (i.e., services are provided by businesses in the private sector rather than by government employees). Many of these contracts were already paid for, which allowed contractors to continue to work. After the shutdown extended for several days, depending on the part of the country involved, it may have been necessary to call back either contractor or in-house personnel to provide maintenance required to prevent loss of landscaping previously installed with taxpayer dollars.

Mr. MICA. I would like to know. Then, as far as PR shops, did all of you keep your PR shops open or was there a decrease in the staffing of the Public Affairs Offices? Mr. Broadnax.

Mr. BROADNAX. There was a very, very sharp decrease. There were several people kept to help the Secretary stay in touch with the employees throughout the department on a daily basis.

Mr. MICA. You had some down. How about you, Mr. Robinson?

Mr. ROBINSON. There was a very sharp decrease.

Mr. MICA. Mr. Glynn.

Mr. GLYNN. A very significant reduction.

Mr. MICA. Mr. Muñoz.

Mr. MUÑOZ. A significant reduction.

Mr. BRICKHOUSE. Very significant reduction.

Ms. CHATER. The same, a significant reduction.

Mr. MICA. OK. The other general question, I noticed that there were a variety of plans. For example, in Social Security, you prepared a plan for a 2-week shutdown, and it seemed like some of you had a shutdown for a shorter period of time.

Was there any continuity? You did 2 weeks; is that correct?

Ms. CHATER. Well, we started, in our contingency planning, sir, with the notion that we could have a smaller number of people excepted in the beginning of the shutdown; and, not knowing, of course, how long it would take, we made another plan, consistent with our objectives, for what we might do at a later time.

While a 2-week duration was sort of a talking period, it was never meant to be specifically contingent on 14 days, it was to be what happened based on our experience.

Mr. MICA. You had a short-term and a longer-term?

Ms. CHATER. That is about it, Mr. Chairman.

Mr. MICA. What about you, Mr. Brickhouse?

Mr. BRICKHOUSE. In the VA, our initial plan was that the shutdown would not go longer than 1 week and, as we have talked about, that is why we started making changes.

Mr. MICA. We had some problems there. Mr. Muñoz.

Mr. MUÑOZ. We looked at short and longer term, and longer meant beyond 10 days.

Mr. MICA. In your volume, Mr. Glynn, what did you plan for? I haven't read the whole thing, but am going to take it home tonight and go through it. Go ahead.

Mr. GLYNN. As long as you don't ask me if I've read the whole thing, Mr. Chairman. [Laughter.]

We anticipated a shorter-term shutdown when we put the plan together, although we had started thinking about the implications of a longer shutdown as the shutdown unfolded.

Mr. MICA. This really is just for short-term. Mr. Robinson.

Mr. ROBINSON. As I testified, short-term longer-term, sir.

Mr. MICA. OK. Mr. Broadnax.

Mr. BROADNAX. Short-term and long-term.

Mr. MICA. In your two-page summary, with a 30-page addendum. Well, those are, I think, some of the questions that I had.

Oh, there is one other area, too. In multi-year funding, for example in HUD, there are some programs, I think, that have multi-year funding, and some of these, I understand, were closed down. What was the rationale for that, where the funds were there that they were closed down, anyway? Because you had the biggest close-down, didn't you, Mr. Robinson?

Mr. ROBINSON. I understand that is the case, sir. Our thinking was that we would apply the law in terms of property and safety, and we attempted to do that.

Funding in many of these multi-year programs is done on what we call a lock-box basis, so the recipients have a line of credit against which they draw down funds, and so funds would have flowed, over a period of time, out of these lock-box situations.

In a short circumstance, we would have been able to cover funding, or funding would have been covered through that lock-box process.

Mr. MICA. You still closed them down, anyway?

Mr. ROBINSON. The lock-box process requires us to maintain a number of systems in order to do that and, in our longer-term process, we were bringing back people to maintain those systems.

Mr. MICA. I think Mr. Fazio wants to talk to you later. The other panelists, did you have any other areas where there was a continuation of funding in a multi-year fashion?

Mr. BROADNAX. In our case of Medicare, it is a trust fund, so the trust funds were there.

Mr. MICA. You kept everything going in Medicare?

Mr. BROADNAX. Well, no, we did not. In terms of the applications, taking applications, initially we did not.

Mr. MICA. Then you changed?

Mr. BROADNAX. We thought, if we go longer-term, we would begin to take them.

Mr. MICA. OK.

Ms. CHATER. For Social Security, I would answer the same way.

Mr. MICA. Yes.

Ms. CHATER. We have a trust fund, of course, which we interpret as an indefinite appropriation and, for our second program, the Supplemental Security Income program, we are forward funded for the first quarter of the year, so we could continue functioning until December 31.

Mr. MICA. In some of the activities that have multi-year funding or are self-funding, we should possibly look at those categories for future reference in functions to be continued.

Mr. MORAN. Excuse me.

Mr. MICA. Mr. Moran.

Mr. MORAN. Following up on that, I appreciate the fact that I am the only Democrat here, so I would make an urgent plea that we at least extend the current continuing resolution that is currently in effect for at least another month.

The reason for making it at least 30 days deals with several reasons, but I think foremost is something that the chairman was getting at, and that is the grant funding. It extends far beyond the lives of Federal employees.

If, for example, we don't have adequate funding at the beginning of the year, we would not be able to issue the grants for Medicaid, Aid For Dependent Children, social services, foster care, adoption, and so on. That is a matter of billions of dollars and, more importantly, millions of people who are wholly dependent, in many cases, upon those Medicaid and cash assistance grants—the very poorest, the very neediest in our country.

There wasn't a problem this time because, since it occurred in November, the original or continuing resolution enabled you to pay those grants out to the States October 1st, the beginning of the fiscal year.

The second quarter would occur as of January 1st and, if there is not an adequate continuing resolution, then the lives of tens of millions of people are going to be adversely affected.

I am both sending a message to my colleagues, but also raising an issue that I think perhaps you should address, particularly Dr. Broadnax, on behalf of the Department of Health and Human Services, because those are probably the largest grants that go out to States.

I don't know what happens if the AFDC payments are not made and Medicaid and Title 20 and foster care and the like. That could be a disastrous shutdown to the people who can afford it the least.

Dr. Broadnax, could you respond to that?

Mr. BROADNAX. I agree with the Congressman's description. It would be very, very painful for the recipients, but also place the States in great difficulties, because they are our partners in terms of administering many of the programs that you have described.

As I said in my formal testimony, this is something we hope to avert at all cost.

Mr. MORAN. Thank you. The legislation that I referred to, that I would hope we could get passed, that would keep Federal employees on the job in the event of lapsed appropriations, does not cover this eventuality because, clearly, that would not provide adequate funds for your grants and, while they may be on the job, in the absence of a continuing resolution, we clearly would have to suspend those payments; and I don't see any way we could possibly pass legislation that would get around that.

I have heard various versions of short-term continuing resolutions. They don't share their entire strategy with us all the time. In fact, we don't know, oftentimes, until the very last minute, what the plan is. I would urge the leadership of this body to propose an extended continuing resolution that gets us through early January, so that those grants can be made.

With that point, maybe we should move on to the next panel, Mr. Chairman.

Mr. MICA. I thank the gentleman. Mrs. Morella has requested one additional question.

Mrs. MORELLA. Thank you. Right. I just wondered, Mr. Broadnax, since I talked about medical research in my opening statement, if you might tell us about what research activities did continue during the shutdown, and how the determination was made in terms of what research activities should be continued or not.

Mr. BROADNAX. First of all, Congresswoman, let me say that our approach to particularly the NIH and the National Institutes was to discuss, of course, the broad guidelines with the scientific and medical leadership there, but to have those best qualified, then, to guide our hand, or to guide the process, if you will, in terms of implementing those guidelines as related to the various institutes and the research taking place therein.

Where research was in progress and, to cease or to shut that research down it would have been destructive to it, arrangements were made to keep it going. It was on a case-by-case basis that those decisions were made. The attempt was not to be destructive

to any research or trials or so forth that were in progress during the shutdown, so those would have been kept going.

Mrs. MORELLA. It was done on a case-by-case basis, which means that it tends to be arbitrary, somewhat capricious, because I know of a lot of researchers who were so frustrated because they really felt they had to get back to the laboratory to continue with the research which, again, was going to pay off in terms of health, as well as financially, too.

I guess that is a problem that you face in the medical field.

Mr. BROADNAX. It is a big problem. We do not like to be in the position of looking at a researcher across his or her bench and saying that we do not think that his or her research is important, as we don't want to be looking across that bench saying that any of our employees are not essential; but it is on a case-by-case basis, and I said we do it in collaboration with the scientific and medical leadership within the various institutes.

Mrs. MORELLA. A mention had been made of trust funds for Social Security. The Medicare trust fund, how would you feel about using that for the new Medicare recipients or clients, because you held off signing them up under the shutdown, right? Could you not have used trust fund money for that?

Mr. BROADNAX. Yes, we could. As I said before, we were about to. Remember, I said we had a short-term and a long-term plan.

Mrs. MORELLA. Yes.

Mr. BROADNAX. In the short-term, we were not receiving applications. We knew, in the longer term, because of the backlogs and the destruction that now starts as a result of developing those backlogs, that we would have to bring people back and start to take the applications.

Mrs. MORELLA. I think Mr. Horn probably wants to continue with that question. Just one final point. I just wondered, did you all come up with some plans for those employees that were considered non-essential, even though we hate that term?

Because they would call my office, panic stricken, about "What do I do if I need money for cash-flow, even though I have an assurance I will be paid later? Do I file for unemployment?" What is the status?

I know some of you mentioned hotlines were available. Did you have anything that was kind of consistent, uniform that came, whether it would be from OMB or whether you put it together and met together, in terms of discussing how to ease the panic that people had who had to pay mortgages and tuition and whatever? Does anybody want to comment on it?

Ms. CHATER. Yes, I would like to respond to that, because I think there were a number of initiatives that took place during this time.

First of all, for our employees, you have heard us testify that many of the agencies set up a hotline for their own employees; and ours was used to the maximum. We also prepared, on our own, questions and answers about unemployment, when to file, whether to file, the pros and cons of doing so. We made the applications available to all of our field office employees throughout the United States.

The hotline was for all 66,000 employees scattered all over the country. I think it is important that we remember that not every-

one of our Federal employees reads the Washington Post or watches C-SPAN or CNN, and so there really was a need for much communication, particularly outside of the Beltway.

We did that, and I know that many of the agencies represented here and elsewhere put together very detailed communication plans for their employees. Most of us have employee assistance programs that are ongoing.

I know that we had many psychological problems brought to our attention because of the worries about payments and so on, and I think we provided the best we could for that particular purpose.

I would also like you to know that there is a group of us called the President's Management Council that meets on a monthly basis. It is chaired by Mr. Koskinen. In that President's Management Council, those of us who are responsible for managing agencies have an opportunity to talk with each other.

In addition to the formal kinds of things that you have been talking about today, there was a great deal of informal communication between and among us: "What did you do since you were here longer than I?" "How would you handle this?" "How do you deal with patient care, because we're worried about our SSI beneficiaries?" That sort of thing.

There was a great deal of concern, I think, expressed by the agencies, and a wonderful informal system for sharing information, as well.

Mrs. MORELLA. That sounds like a great idea, in terms of continuing the kind of networking and sharing ideas. It just seems as though, maybe, from what you said, there also needs to be put into effect some consistent policy for how to respond to the needs, realizing that some of them will be different from agency to agency, but in general, so that you all have combined the information and have it available.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady and yield to Mr. Horn for one final question.

Mr. HORN. Thank you, Mr. Chairman.

A number of my colleagues, including the chairman, have mentioned the subject of Medicare. I would just like to pursue a few things on that.

As I understand it, new applications for Medicare had to be turned away initially; is that correct?

Mr. BROADNAX. That is correct.

Mr. HORN. Now, Medicare does operate from a trust fund that we all contribute into. Was the processing of applications paid for from that trust fund?

Mr. BROADNAX. That is my understanding.

Mr. HORN. Would the Department of Health and Human Services support legislation to make the costs of processing new applications payable from that trust fund when there has been a lapse of appropriations, or do you need that authority?

Mr. BROADNAX. As I understand it, by there being a trust fund, that is why we were able to continue to operate because, under the trust fund's authority, even though there was a lapse, we could continue to use trust fund dollars.

Mr. HORN. What was the reason why we turned away Medicare applications in the beginning?

Mr. BROADNAX. By when we applied the law, and the guidelines as we interpreted them. That is why I said earlier on there was a short-term and a long-term plan but, in the initial application, if it was going to be a short-term shutdown, under the guidelines, as we looked at issues related to health, safety, and the protection of property, it was appropriate to have the first instance shutdown and, by that, turning away the applicants.

As time went on then, applying those same guidelines, that logic then shifted where, under the same set of guidelines, it was then appropriate to entertain bringing people back to process those same applications.

Mr. HORN. Was that shifting logic helped by a call from the White House?

Ms. CHATER. No. No. Because we process applications for Medicare, I would like to say no.

Mr. HORN. You process them? OK. You are saying no, you got no further guidance? It seems to me that is a fairly political hot potato and, if I were sitting in the White House, I would say, "What nin-compoop said we shouldn't take applications in this area?"

Ms. CHATER. What you have to say about applications for Medicare applies, of course, to the fact that we didn't take applications for disability benefits or for new Social Security benefits.

I like to think of it a little bit like a leaky roof. If your roof leaks, you can put a pot under the leak and collect the water, and you can do that for a few days but, as the leaks magnify, and pretty soon your whole roof is leaky, then you have a very, very damaged house.

The assumption that we made in the beginning was that the furlough would be very short-lived and we could do that in a short period of time but, based on our experience, we know that backlogs accumulate and, over time, there is no way we could implement the intent of the trust funds if we keep delaying. Therefore, the Phase 2, or the plans came into play for recalling more employees than we had in the first place.

In the case of Medicare, we send out a notice to beneficiaries a month or so before they turn 65, and we ask the people to come in ahead of time to give us ample time to process the applications. There wasn't an emergency. It's not as though somebody needed Medicare tomorrow, because we hopefully would have them come into the office a week or 2 weeks or a month ahead of time to file.

That was the nature of the taking of Medicare applications in our offices.

Mr. HORN. You are saying, Commissioner, that you made the decision to reopen the application line for Medicare; is that correct?

Ms. CHATER. OMB, as far as I am concerned, reviewed our plans, but I was responsible for making the decision about how to and when to recall additional employees to implement the trust fund charge.

Mr. HORN. What did your initial memorandum or planning document say as to the extent of a short-run shutdown? Are we talking 3 days, 4 days, 2 days, what?

Ms. CHATER. We were working on a theoretical short-term, long-term, never expecting that we would have to think about a long term. In the beginning, for planning purposes, I think some of our staff started to operate on a "What would happen if this went on for 2 weeks?"

After the first day, when we realized that we had 28,000 applications that we couldn't take and 200,000 telephone calls that we couldn't answer, we knew that it could never, ever go on that long if we were to, indeed, carry out the intent of the law.

Mr. HORN. OK. The original plan, that there is such a thing as a short run, was simply in error; is that correct?

Ms. CHATER. It was a short-term best guess based on some assumptions.

Mr. HORN. In other words, as far as you are concerned, if we went through this again—hopefully we won't, but if we did—you're saying we should not be furloughing anybody that has anything to do with these thousands of applications that pour into your administration, and that you handle, you say, for Medicare, that we shouldn't even have a 24-hour furlough?

Ms. CHATER. If we were to do this again, I would want to furlough a very minimum number of our employees, because we are now already behind; so it is not just the new cases that we wouldn't be able to process, it is the ones that we are now working on with increased productivity to make up for what we lost.

Mr. HORN. Yes. The short-term, long-term distinction really makes no sense when it comes to this type of government operation; is that correct?

Ms. CHATER. It made sense in the beginning.

Mr. HORN. I don't see that it made any sense. You knew that volume coming in every day. It hasn't changed, presumably, over the years.

Ms. CHATER. Well, one always suspects that a furlough would be short-lived and, therefore, we can make do, because we only need one bucket to catch the water in the leaky roof.

Mr. HORN. It is an interesting analogy, but it doesn't have any relationship to reality is my conclusion, after hearing the leaky roof approach.

It seems to me, if you go through this again, we shouldn't assume it will be short. Unless the President signs on the appropriations bill or the continuing resolution, it could be very long. How do we know?

It seems to me, I would hope, the next time, we do not, on essential health services, shut down the operation, since there is a choice to be made. I take it neither the President nor the Secretary of HHS called and said, "What are you people doing over there?"

Ms. CHATER. The Secretary of HHS wouldn't have called, in any event, because we are now an independent agency.

Mr. HORN. I know you are independent.

Ms. CHATER. However, I would say this to you.

Mr. HORN. She does have HCFA, still.

Ms. CHATER. Yes, she does. My point is that one of the issues that we have not really discussed in this whole problem has to do with the interaction of agencies, the cooperativeness that we experience on a weekly basis. SSA can make some assumptions, but we

have to work cooperatively with the Department of Health and Human Services, as we do all the time.

We have also had to be in contact with the Immigration and Naturalization Service, because we do a lot with INS. There is a whole cooperative element within government that we need to pay attention to, as well.

Mr. HORN. Just to get the record complete, when I asked you the question initially, Mr. Secretary, you really didn't answer it. I take it there was no influence—since the Medicare administration is still in your agency—there was no influence from the President, the White House, anyone else to get you to help unravel the mistake of not taking applications?

Mr. BROADNAX. As I said before, Congressman, I received no phone call. We had a short-term, long-term approach. I understand your concern and disagreement with that. I think we were operating off of history. That is all we had to guide us. History had demonstrated shutdowns had been very short in duration. In the past, some had been averted altogether.

That is why I said in my opening statement, I think the only way we can be on solid ground here is to make sure we do everything possible, both branches of government working together, to avoid at all cost any shutdowns in the future.

Mr. HORN. We hope you are right.

Mr. MICA. I thank our panelists for their testimony today. We may have additional questions, which we will submit in writing. Time does not permit us to offer all the questions from both sides of the aisle at this point.

I hope, Mr. Muñoz, you will also tell the Secretary of the Treasury, Mr. Rubin, that we are carefully watching his raid on the employee retirement funds, and also extend our regards to him for the holidays. We will be watching that issue. You will hear more about that later on.

I would like to thank each of the panelists for their cooperation and close with a comment that President Clinton and Vice President Gore made to all the Federal employees after the closedown. I will just quote one line: "You remain good people caught in what Churchill called 'the worst system of government devised by the wit of man, except for all others.'"

Thank you so much, and we will excuse this panel.

I would like to welcome our second panel today. We have in our second panel the Honorable John Koskinen, Deputy Director for Management of the Office of Management and Budget; we also have Christopher Schroeder, Deputy Assistant Attorney General, the Office of Legal Policy, the Department of Justice; and we have Allan Heuerman, Associate Director for Human Resources Systems Service, the Office of Personnel Management.

Most of the panelists have been before us previously. If we could, have everyone go ahead and exit, and get order in the hearing room.

Most of you have been before us before and know it is the custom to swear in our witnesses. If you will rise and raise your right hand.

[Witnesses sworn.]

Mr. MICA. Thank you. Welcome back, Mr. Koskinen, the Office of Management and Budget. As you know, we try to have you abbreviate your statement, and we will make your entire comments part of the record. We welcome you, and you are recognized.

**STATEMENTS OF JOHN A. KOSKINEN, DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET; CHRISTOPHER H. SCHROEDER, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE; AND ALLAN D. HEUERMAN, ASSOCIATE DIRECTOR FOR HUMAN RESOURCES, OFFICE OF PERSONNEL MANAGEMENT**

Mr. KOSKINEN. Thank you, Mr. Chairman. I may ask your indulgence to add a few seconds to my response, because I would like to build into my oral testimony responses to some of the questions that the panel has raised.

Mr. MICA. That is fine. Go right ahead.

Mr. KOSKINEN. I appreciate the invitation to appear today before the House Civil Service Subcommittee to discuss the shutdown of government service that occurred in the middle of November, because of the lack of appropriations.

The Federal Government shut down because neither a complete set of appropriation bills nor a continuing resolution was enacted in a timely way. The Constitution and the Antideficiency Act require that an agency only incur obligations to make payments when the Congress has passed and the President has signed either an appropriation bill for the agency or a temporary appropriation, known as a continuing resolution.

I think at this point I would like to make a couple of points clear that I am sure the committee understands.

First, as Mr. Muñoz noted, the law is very clear that it is a violation of the criminal law to, in fact, misapply the Antideficiency Act.

Second, the Congress made it clear, after the last shutdown in 1990, by adding the word "imminent" before a "threat to life or property," that the act is to be applied narrowly.

Third, I would like to note that it is not a matter of choice by the agencies whether they might do something they would like to do, nor can the agency respond to the interests of anyone. The questions are, what are the legal guidelines, what are the applicable guidelines, and how is the law to be interpreted and applied?

The failure to enact an appropriation bill has resulted in substantial cost to taxpayers and degradation of government services. The clearest lesson to be drawn from the recent government shutdown is that it should not be allowed to happen again. Disputes over budget priorities should not be resolved in a crisis atmosphere in which Federal workers and recipients of government services are needlessly harmed.

With regard to the governmentwide impact of the shutdown, we asked the agencies to submit preliminary estimates of the effects of the shutdown on their operations and the resulting costs. The monetary costs are currently estimated at more than \$700 million, with approximately \$400 to \$450 million of that being payroll costs for furloughed employees.

Significant additional costs, that cannot be determined at this time, include interest payments to third parties required under the Prompt Payment Act and the Cash Management Improvement Act when the Federal Government does not pay its bills on time. There will also be additional personnel costs necessary to deal with the backlog of work resulting from the shutdown.

As significant as the monetary costs are the denial of basic and important services to the American public. Millions of Americans were inconvenienced or will be delayed in the receipt of payments and benefits to which they are entitled.

Some agencies and activities were already funded and, therefore, were allowed to continue to function during the shutdown. For example, the Department of Agriculture did not shut down, because its appropriation bill had been enacted into law. The U.S. Postal Service did not shut down, because it is funded through fees.

A major exception to the prohibition against incurring an obligation without an appropriation is for emergency actions to protect against imminent threats to life or property.

For the record, I would like to clear up a very unfortunate use of the terms "essential" and "non-essential," which, unfortunately, we've continued to talk about this morning. These terms do not appear anywhere in the statute. I would emphasize that: these terms do not appear anywhere in the statute.

When there are no appropriations, all employees are furloughed, except for those performing activities that provide for national security, relate to the conduct of foreign relations, provide for continuing mandatory benefit payments and, most importantly, which covers most of the workers we are talking about, are engaged in emergency activities to protect life and property—for example, medical care of inpatients and emergency outpatient care.

If the distinction were between essential and non-essential, no employees would have been furloughed. In light of this subcommittee's long interest in, and backing of, a properly supported work force, I know that you will join me to ensure that, henceforth, the shutdown distinctions are between emergency and non-emergency employees.

As under past administrations, the Office of Management and Budget was responsible for preparing for the possibility of a shutdown. During the summer, in light of the delays in congressional actions on virtually all appropriation bills, speculation increased about a possible government shutdown due to a funding hiatus.

As a result, Director Rivlin asked me to lead a working group to prepare for an orderly shutdown. This group was composed primarily of OMB staff but included outside representatives from agencies such as the Department of Justice.

Director Rivlin asked the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations because, as I noted earlier, after the last shutdown in October 1990, Congress had amended the Antideficiency Act to insert the word "imminent" before the words "threat to life or property."

On August 16, 1995, the Office of Legal Counsel in the Department of Justice updated the 1981 opinion of the Attorney General interpreting the law pertaining to government operations during a

lapse in appropriations. On August 22d, Director Rivlin asked that the heads of all executive departments and agencies send OMB updated contingency plans to deal with a funding hiatus based on the 1981 Attorney General's opinion as updated by the Department of Justice.

There has been a tone of irony in this hearing. On the one hand, we have been accused of planning too far ahead and providing too much planning and, on the other hand, we have been accused of not providing enough planning. Let me make a few things clear.

Chairman Clinger referred to the July 26th advice to the agencies from Director Rivlin. That advice clearly states, as does the subsequent advice on August 17th, that the advice there to the agencies was with regard to the ultimate impact of declines as a result of appropriation bills that might be passed. Neither of those guidances asked for updated shutdown plans. The actual request, as noted in my testimony, came on August 22d.

Questions have been raised about inconsistencies, across the board. As noted by Administrator Chater, inconsistencies are built into the operation of the government.

Social Security is forward funded, has a continuing obligation and, therefore, historically, limited administrative functions have been implied from those facts to be appropriate. VA benefits are appropriated.

In the absence of an appropriation, there is no ability to imply an exception for employees, unless there is an emergency. You talked about the Civil Service Retirement Fund. The Civil Service Retirement Fund continued to operate because, in fact, those operations were paid for by the retirement fund.

As we go across-the-board, the inconsistencies arise not because of a difference in view of the agencies, but because of a difference in the legal and financial situations of the programs being considered.

When agencies were asked to review their plans, they were told to assume a short shutdown, with the understanding that plans would need revision in light of a more protracted shutdown, and might need to be adjusted for unforeseeable circumstances.

OMB assumed that this was appropriate, because shutdowns, since 1981, had averaged 2 days. With the participation of the Department of Justice, we reviewed the plans for general conformity with the Attorney General's opinion and governmentwide consistency.

The working group also developed a common set of questions with appropriate answers for distribution to the agencies. These materials were integrated with those developed by the Office of Personnel Management for employment issues, such as the impact of furloughs on employees' pay, leave, and benefits.

Fortunately, a continuing resolution was enacted before the beginning of the fiscal year, providing funding through November 13th. Again, we asked for plans on August 22d, planning for a potential shutdown on September 30th, 6 weeks in advance.

I might note, in passing, that one of the reasons we were planning in advance was the Speaker of the House had made it clear in April and June that his plan was, in fact, to shut the government down.

However, by November 9th, only two appropriations bills had been enacted for fiscal year 1996. Therefore, Director Rivlin informed the heads of executive departments and agencies that it was possible the Congress would not pass a second acceptable continuing resolution by Monday, November 13th.

With regard to Congressman Moran's very good question about what happened on the 13th, on November 9th, there is guidance the committee has a copy of from Director Rivlin advising the agencies that they should review their shutdown plans and ensure "that your employees are properly informed."

On November 13th, we advised the agencies that there was great risk that there would not be a continuing resolution. I would remind the committee, in response to Congressman Moran's question, that the continuing resolution, or the appropriations in the continuing resolution, did not expire until midnight Monday. We, therefore, were obligated through the night on Monday to see what the Congress would do.

On many occasions in the past, the Congress has actually acted the day after the appropriation.

The judgment was made that, rather than furloughing employees and having no one here on Tuesday in the face of a potential continuing resolution, we should behave as we had historically always done, which was to bring everyone in, with notification beforehand as to who were going to be emergency employees and who were not going to be designated emergency and, if there were no continuing resolution on Tuesday morning, by the middle of the day, in an orderly shutdown, activities would be shut down and those would, in fact, be obligations incurred by the government for the employees through the time that they spent working on that day.

On the morning of November 14th, Director Rivlin advised the agencies to proceed with the shutdown in the face of the absence of a continuing resolution.

As the shutdown continued for an unprecedented period of time—and I think that is one of the things this committee should bear in mind, that Congress had never in history caused the government to shut down for more than 2 working days—by the time we got to Thursday and Friday, we were in uncharted, unprecedented history. The Congress, for the first time, had shut the government down for a period of 4 working days, heading into the weekend.

As the shutdown continued, agencies were asked by OMB to review the implementation of their plans in case of developing emergency situations. As a result, on Friday, November 17th, the Social Security Administration and the Veterans Administration received approval to call back a number of personnel to work on Monday, November 20th. On Sunday, November 19th, HUD and the Department of Defense announced plans to recall a number of other workers to address developing emergencies.

I am sorry that Congressman Horn is not here. The question has been raised, "Isn't it inconsistent to say that someone is not an emergency employee on the first day and then, on the fifth day, determine that they are?"

I think Administrator Chater's response is exactly right. The law imposes a criminal fine and a criminal penalty on anyone who

over-interprets the act. It is logical to assume that what is an emergency on the 1st day may not be an emergency on the 4th day and, conversely, what you can tolerate for a day or two becomes intolerable with the passage of time.

There is no way in response to Congressman Horn's question, that if we do it again, we will plan on a day-by-day basis if there is a shutdown and, for the first 2 or 3 days we will, in fact, have a shutdown, depending upon who are emergency employees, in functions for the first 2 or 3 days.

If we go for a longer period of time, I would expect that the agencies would continue to monitor and review their plans and, after 5 or 7 days, we would have additional determinations made as to who is now an emergency employee and who is not an emergency employee.

In some areas like parks, you may have an emergency activity for the first 3 days, shutting the parks down, at which point you then can have those employees furloughed because they are no longer engaged in emergency activities.

Therefore, I think it is important to bear in mind that it is not a sign of inconsistency on the part of the agencies that determinations continue to be made, especially as we move into unprecedented territory. If we started again, I think that we would find, in the cases of HUD and other places, that for the first day or two we could tolerate the situation in a way that we could not tolerate at the end of 5 or 7 days.

You asked how our determination would differ if the lapse of appropriation were to last another 10 days, 30 days, or even 90 days. I would like to stress—and I cannot stress it too hard—that a shutdown of more than 2 weeks would be so disruptive that it should not even be considered.

In such extreme circumstances, the hardship to all Federal employees—emergency and non-emergency—as well as military personnel, all Federal contractors, grantees, and anyone else dealing with the Federal Government, with the exception of recipients of certain mandatory benefits, none of whom would receive payment, would be without precedent.

Again, I would remind the committee that there is an assumption that, if we bring back a furloughed employee to perform an emergency function, that that solves the problem.

As we noted on that weekend, we were about to move beyond a situation of who were emergency employees and who were not, and deal with the situation that the government had no money to pay either the emergency employees or the non-emergency employees, was about to have no money to pay the military employees, was about to not have money to pay any bills that were not subject to appropriation.

The Antideficiency Act does not allow us to make payments. The Antideficiency Act, in emergency circumstances, only allows us to incur the obligation to have workers and contractors performing emergency activities. We have no authority to pay them. We have no funds to pay them, because of the lack of an appropriation.

Mrs. MORELLA [presiding]. Mr. Koskinen, your testimony is very valuable to us, but we only have about 6 minutes to vote.

Mr. KOSKINEN. Can I just close, then, with my last sentence?

Mrs. MORELLA. I will let you close with the last sentence, and then we will recess for 15 minutes.

Mr. KOSKINEN. Shutting the Federal Government down is a serious matter, with substantial costs and significant dislocations for the American public. For more than 200 years, major budgetary issues between the Congress and the executive branch were settled without major disruptions in government operations.

Our goal should be to emulate that minimum standard of success. If that goal is unattainable, we should at least not subject the country to another shutdown this year.

Thank you, Madam Chairman.

[The prepared statement of Mr. Koskinen follows:]

TESTIMONY OF  
JOHN KOSKINEN  
DEPUTY DIRECTOR FOR MANAGEMENT  
OFFICE OF MANAGEMENT AND BUDGET

BEFORE THE  
CIVIL SERVICE SUBCOMMITTEE  
OF THE  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
HOUSE OF REPRESENTATIVES  
December 6, 1995

Chairman Mica and Members of the Subcommittee:

I appreciate the invitation to appear today before the House Civil Service Subcommittee to discuss the shutdown of government service that occurred in the middle of November because of lack of appropriations.

The Federal government shut down because neither a complete set of appropriations bills nor a continuing resolution was enacted in a timely way. The Constitution and the Anti-Deficiency Act require that an agency only incur obligations to make payments when the Congress has passed and the President has signed either an appropriation bill for the agency or a temporary appropriation known as a continuing resolution. This failure to enact appropriations bills resulted in substantial costs to taxpayers and degradation of government services. The clearest lesson to be drawn from the recent government shutdown is that it should not be allowed

to happen again. Disputes over budget priorities should not be resolved in a crisis atmosphere in which federal workers and recipients of government services are needlessly harmed.

#### Government-wide Impact of Shutdown

We asked the agencies to submit preliminary estimates of the effects of the shutdown on their operations and the resulting costs. The monetary costs are currently estimated at more than \$700 to \$750 million with approximately \$400 to \$450 million of that being payroll costs for furloughed employees. Significant additional costs that cannot be determined at this time include interest payments to third parties required under the Prompt Payment Act and the Cash Management Improvement Act when the Federal government does not pay its bills on time and additional personnel costs necessary to deal with the backlog of work.

As significant as the monetary costs are the denial of basic and important services to the American public. Millions of Americans were inconvenienced or will be delayed in the receipt of payments and benefits to which they are entitled. The following examples of services delayed or denied during the shutdown is illustrative only and does not represent a comprehensive audit of the costs and impacts on services of the shutdown.

- The Social Security Administration was forced to turn away 112,000 claim applications, 212,000 requests for new or replacement Social Security cards, 360,000 individual office visits, and 800,000 toll-free phone calls for information and assistance.

- 40,000 individuals were delayed in enrolling in Medicare.
- More than two million visitors were denied access to National Park Services facilities.
- More than 80,000 passport applications were delayed.
- More than 80,000 visas to visitors who spend an average of \$3,000 on their trips were delayed with a negative impact on airlines, hotels, and tourist facilities.
- Veterans Benefits offices were closed to "walk-in" veteran clients, pending claims for compensation, pension, education and vocational rehabilitation were not processed, and payments of GI Bill education checks and insurance death claims were not processed.
- Customer Services at the Internal Revenue Service were halted for four days. More than 400,000 calls were not answered -- built-up taxpayer demand will restrict the IRS' ability to respond in a timely manner. More than 80,000 walk-in requests were not met and as a result taxpayers were delayed in obtaining tax forms or other account assistance.
- Because verifications of Social Security numbers (at SSA) and immigrant status (at INS) could not be carried out, processing of Federal college aid applications were delayed for 80,000 students and families.

- "Deadbeat Dads" received a four-day holiday as the referral of 80,000 cases to the Federal Parent Locator Service was delayed.
- More than 10,000 home purchase loans and refinancings totaling \$800 million worth of mortgage loans for moderate-and low-income working families nationwide were delayed by the closing of the Federal Housing Administration.
- More than 160,000 National Guardsmen did not drill over the weekend.

#### Government Functions which Continued during the Shutdown

Some agencies and activities were already funded and therefore continued to function during the shutdown. For example, the Department of Agriculture did not shut down because its appropriation bill was enacted into law, and the U.S. Postal Service did not shut down because it is funded through fees. Basic functions of the Courts and the Legislature continued to function as Constitutional arms of the government. The major "exception" to the prohibition against incurring an obligation without an appropriation is for emergency actions to protect against imminent threats to life or property.

For the record, I would like to clear up a very unfortunate use of the terms "essential" and "nonessential." These terms do not appear anywhere in the statute. When there are no

appropriations, all employees are furloughed except those performing emergency activities that (1) provide for the national security; (2) relate to the conduct of foreign relations; (3) provide for continuing mandatory benefit payments; and (4) protect life and property, for example medical care of inpatients and emergency outpatient care. If the distinction were between “essential” and “nonessential,” no employees would have been furloughed. In light of this subcommittee’s long interest in and backing of a properly supported Federal work force, I know that you will join me to ensure that henceforth the shutdown distinctions are between “emergency” and “non-emergency” employees.

#### OMB’s Role in Preparation and Execution of Shutdown

As under past administrations, the Office of Management and Budget was responsible for preparing for the possibility of a shutdown. During the summer, in light of the delays in Congressional action on virtually all appropriation bills, speculation increased about a possible government shutdown due to a funding hiatus. As a result, Director Rivlin asked me to lead a working group to prepare for an orderly shutdown. This group was composed primarily of OMB staff, but included outside representative from agencies, such as the Department of Justice.

Director Rivlin asked the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations because there had been an amendment to the law which mandates shutdown during a funding hiatus. In particular, after the last shutdown in October of 1990, Congress had amended the Anti-Deficiency Act essentially to insert the word

“imminent” before the words “threat to life or property.” On August 16, 1995, the Office of Legal Counsel in the Department of Justice updated the 1981 opinion of the Attorney General interpreting the law pertaining to government operations during a lapse in appropriations.

On August 22, Director Rivlin asked that the heads of all executive departments and agencies send to OMB updated contingency plans to deal with a funding hiatus. The agencies were guided by the 1981 Attorney General’s opinion as updated by the Department of Justice.

When agencies were asked to review their plans, they were told to assume a short shutdown, with the understanding that plans would need revision in light of a more protracted shutdown and might need to be adjusted for unforeseeable circumstances. OMB assumed that this was appropriate because shutdowns since 1981 had averaged two days.

OMB, with the participation of the Department of Justice, reviewed the agency plans for general conformity with the Attorney General’s opinion and government-wide consistency. For example, questions were raised about training activities across the government, including in the Departments of Defense and Justice. The agencies that gather and publish statistics were told that such activities were not within the excepted activities under the Anti-Deficiency Act. Military hospitals and VA hospitals both had questions about whether elective surgeries were excepted activities. In late September copies of the final agency shutdown plans were transmitted to Congress.

The working group developed a set of commonly asked questions with appropriate answers for distribution to the agencies. These materials were integrated with those developed by the Office of Personnel Management for employment issues, such as the impact of furlough on employees' pay, leave, and benefits. Where necessary, answers were reviewed with the Department of Justice. The Office of Personnel Management provided guidance on "Main Street" which is OPM's electronic bulletin board. OPM also convened weekly meetings of an interagency group of personnel officers and at least one member of my working group attended the meetings to keep the interagency group informed of the working group's progress.

Also, as in the past, the Department of the Treasury concentrated on the problems of what would occur if there were a failure to increase the statutory limit on the public debt. I would like to take a moment to clarify the difference between a lapse in appropriations, such as the one that began on November 14, and a debt ceiling crisis. These are two very different circumstances, which operate independently of each other. When there is a lapse in appropriations, the government is without authority to enter into obligations at all. That means no new contracts, no grants, no new loans, no new processing of applications for most programs. The non-emergency Government functions just stop. In contrast, a debt ceiling crisis occurs when the Government hits the maximum amount that we are authorized to borrow. When this happens, the government continues to operate but is unable to borrow more cash. As a result, the government lacks cash to pay bills as they become due. This can be characterized as a liquidity crisis and is (at least analytically) independent of the question of the government's authority to enter into obligations.

Fortunately, a continuing resolution was enacted before the beginning of the fiscal year. It provided temporary appropriations from October 1 through November 13. However, by November 9 only two appropriation bills, the Agriculture Appropriations Act and the Energy and Water Appropriations Act, had been enacted for fiscal year 1996. Therefore, Director Rivlin informed the heads of executive departments and agencies that it was possible that Congress would not pass a second acceptable continuing resolution by Monday, November 13. The agency heads were asked to review their shutdown plans and ensure that their employees were properly informed.

On November 13, Director Rivlin issued a memorandum to all department and agency heads to be prepared to implement their shutdown plans on November 14 if no continuing resolution was enacted. On the morning of November 14, she advised them to proceed with the shutdown. As this shutdown continued for an unprecedented period of time, agencies were asked to review the implementation of their plans for developing emergency situations. As a result, on Friday, November 17, the Social Security Administration and the Veterans Administration called back a number of personnel to work on Monday, November 20. On Sunday, November 19, HUD and DOD announced plans to recall a number of other workers to address additional developing emergencies.

You asked how our determination would differ if the lapse of appropriations were to last another 10 days, 30 days, or even 90 days. I would like to stress that a shutdown of more than two weeks would be so disruptive that it should not even be considered. In such extreme

circumstances, the hardship --- to all Federal employees, emergency and non-emergency, as well as military personnel, all Federal contractors, grantees, and anyone else dealing with the Federal government (with the exception of recipients of certain mandatory benefits), none of whom would receive payment --- is without precedent.

The shutdown ended on Sunday, November 19, when the Congress and the President agreed on acceptable extensions of the continuing resolution. That evening, department and agency heads were contacted and told to instruct their employees to report to work on Monday morning. Funding is now provided through December 15 for agencies whose fiscal year 1996 appropriation bills have not been enacted into law.

#### OMB's Own Shutdown Plans

In addition to reviewing the plans of other agencies, OMB developed a shutdown plan for its operations, originally as a contingency for a possible lapse in appropriations on October 1, and subsequently updated for the lapse on November 14, 1995. Criteria were established for "emergency activities" based on the following functional analysis:

- . core staff (Director, Deputies, Associate Directors, Deputy Associate Directors, etc.) **47 staff**;
- . reconciliation tracking and analysis (staff with specific responsibilities in the reconciliation process) **53 staff**;

appropriations tracking and analysis (staff with specific responsibilities on unsigned appropriation bills) **77 staff**; and

technical support (support staff, special economic and technical analysis staff) **45 staff**.

OMB kept 222 staff on board doing the above "emergency activities," and furloughed 314 staff. The staffing of excepted activities fluctuated slightly through the course of the week (plus or minus 10 staff), based on the passage of an appropriation bill (Transportation --signed on 11/15/95) and the work needed on reconciliation legislation. A daily staffing plan was prepared each evening with approved excepted staff for the following day.

### Conclusion

Shutting the Federal Government down is a serious matter with substantial costs and significant dislocations for the American public. For more than two hundred years, major budgetary issues between the Congress and the Executive Branch were settled without major disruptions in Government operations. Our goal should be to emulate that minimum standard of success. If that goal is unattainable, we should at least not subject the country to another shutdown this year.

I would be pleased to answer any questions that you have.

Mrs. MORELLA. The subcommittee will now recess for 15 minutes for the vote.

[Recess.]

Mr. MICA [presiding]. I will call the meeting of the subcommittee back to order, and we will resume. I thank Mr. Koskinen for his testimony and we will get back to you with questions but, at this time, I want to call on Christopher Schroeder, Deputy Assistant Attorney General, Office of Legal Policy, the Department of Justice. Excuse me if I have slaughtered your name a couple of times here. I've said Schroeder.

Mr. SCHROEDER. That's very close, Mr. Chairman.

Mr. MICA. OK, good. We are glad to have you with us. You are recognized and, again, if you want to submit a lengthy statement for the record, we will do that without objection and, if you could, summarize. The other Members will be returning, and are interested. Thank you.

Mr. SCHROEDER. Thank you, Mr. Chairman, and members of the committee. This is the first time I am appearing before your committee, and I hate to start it with an apology, but I must. My testimony arrived late this morning, contrary to your request for it being here in advance and, when it arrived, it was without fairly extensive appendices. I understand that those are now available. Again, my apologies for the late arrival. It is inexcusable, and I will not attempt to excuse it.

I will offer to be available for questions at the staff level or in any other way you would think appropriate in order to accommodate the committee's interests.

Mr. MICA. That's fine. Just proceed. Thank you.

Mr. SCHROEDER. Mr. Koskinen has covered a number of the points I make in my testimony, so let me just briefly summarize the role of the Justice Department with respect to implementing governmentwide application of the Antideficiency Act.

The Justice Department's function is to provide general legal advice, working with the Office of Management and Budget and, in recent years, that responsibility within the Department has fallen primarily on my office, the Office of Legal Counsel.

The advice we have given over the years, however, originated with an Attorney General opinion in 1981, from then Attorney General Civiletti. His basic interpretation of the legal regime governing a situation of lapsed appropriations has been in place since 1981 and has been consistently followed by the administrations of Presidents Carter, Reagan, Bush, and now President Clinton.

Assistant Attorney General Dellinger of the Office of Legal Counsel issued a memorandum on August 16th of this year in response to a request from Director Rivlin to assess the implications of an amendment to the Antideficiency Act that was enacted in 1990. That was the occasion of the August 16th memorandum.

That memorandum largely reiterates the Civiletti opinion and its views of the proper legal standards to be applied in this situation, views which have been in place at least since 1981. It does amend the Civiletti advice with respect to the interpretation of the emergency exception, which was the subject matter that was addressed in the 1990 amendments.

It is our function to provide legal advice, and the most significant laws we must interpret are Article I, Section IX of the Constitution—as you noted, Mr. Chairman, the appropriations clause—and Sections 1341 and 42 of Title 31 of the Code, the Antideficiency Act.

The only point where I will be somewhat repetitious is to simply reiterate the point that has been made a number of times already this morning.

The structure of the Antideficiency Act is such that, in the situation of a lapse of appropriations, first, no funds can be withdrawn from the Treasury and, second, there are limited exceptions provided in the act for the incurring of obligations, such as commitments to pay employees who are not furloughed and who remain at their posts. In no event in the recent shutdown were furloughed employees who were coming in on that basis in a position actually to receive a paycheck, if we went to a payday that covered periods of the shutdown period.

We can obligate the government to honor those compensation promises but, unless and until there is an appropriation, it would not have been possible to meet the normal pay periods. Fortunately, we have never confronted a payless or a partially payless payday, because the matter has been resolved prior to then.

It is fundamental to note that, when the government is functioning in this period, it is functioning essentially on the basis of its ability to make contractual obligations, and that ability is limited to those categories that are defined under the Antideficiency Act as what we refer to as excepted activities.

Nowhere is the concept of an “essential worker” or an “essential function” found in any of those definitions of excepted activities. What we do analyze are activities and functions to see whether, under the facts and circumstances that exist, on a fairly case-by-case basis, there is a justification for an employee performing that function.

Those circumstances can and do change over time which, as Mr. Koskinen explained, is one of the reasons why employees might be asked to perform a function at a certain day during a shutdown period and not on others.

We used an example in one of our memoranda of truck or vehicle maintenance not being an excepted function, assuming a short-term shutdown but, obviously, if you were maintaining a motor vehicle fleet to perform some otherwise authorized government activity, as time went on, you would have to perform some maintenance on those vehicles, or they would become unsafe to a degree that the protection of property or the safety of human life would be involved, so that the longer a shutdown went on, the more likely it would be that some agencies' motor pool would have to call maintenance staff in to perform rudimentary services.

A contrary example would be the kind of situation some of the large national parks may have faced, in which, although there was no funding available to continue the operation of those parks, when the lapse in appropriations occurred, there were still people in the interiors of large parks like Yosemite or Yellowstone or the Grand Canyon, and there was a rationale for Park Service personnel staying at their stations to ensure the safety of those individuals while

they hiked out of the park, which often can take a couple of days, so that at the beginning of a shutdown, there would be a health and safety rationale for maintaining some personnel, that would then cease.

The facts and circumstances are definitely a factor that agencies take into account, and that is one significant reason that plans and staffing levels have to be updated and reassessed in light of the circumstances, or the best estimates and understandings of the circumstances that obtain at the time those decisions are made.

With that, I will conclude my remarks and be more than happy to respond to any questions you may have.

[The prepared statement of Mr. Schroeder follows:]

**TESTIMONY OF**  
**CHRISTOPHER SCHROEDER**  
**DEPUTY ASSISTANT ATTORNEY GENERAL**  
**OFFICE OF LEGAL COUNSEL**  
**DEPARTMENT OF JUSTICE**

**HEARING BEFORE THE**  
**HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT**  
**SUBCOMMITTEE ON CIVIL SERVICE**

**ON GOVERNMENT SHUTDOWN**

**DECEMBER 6, 1995**

Chairman Mica and Members of the Subcommittee:

Good morning. My name is Christopher Schroeder. I am a Deputy Assistant Attorney General in the Office of Legal Counsel at the Justice Department. I am pleased to appear before the subcommittee today to provide information concerning the Department of Justice's role in implementing the Antideficiency Act.

Much of the responsibility within the Department for providing legal advice to Executive agencies on this subject currently falls within the purview of the Office of Legal Counsel. With respect to that role of the office, Assistant Attorney General Dellinger issued a memorandum on August 16, 1995 to the Director of the Office of Management and Budget ("OMB"), Alice Rivlin, that to a very considerable degree restated the legal interpretation of the Antideficiency Act rendered by then-Attorney General Civiletti in 1981. I have attached that memorandum to my testimony.

Attorney General Civiletti's interpretation of the statute has been followed by the administrations of Presidents Carter, Reagan, Bush, and Clinton. Mr. Dellinger's memorandum did modify the contents of the Civiletti opinion in one respect, to take account of an amendment to the Antideficiency Act that was enacted in 1990.

The memorandum reiterated the functions and activities of the Federal government that may be maintained during a period of lapsed appropriations. In general, during such a period, the Antideficiency Act permits the following categories of functions and positions to continue: those funded through multi-year appropriations and permanent appropriations; those for which there is express authority to continue during an appropriations lapse; those for which authority to continue during an appropriations lapse arises by necessary implication; certain functions and positions that relate to the discharge of constitutional duties and powers; and those relating to "emergencies involving the safety of human life or the protection of property." A more complete explanation of the functions that may continue also is contained in Mr. Dellinger's testimony of September 19, 1995, before a joint hearing of the Senate and House Budget Committees, which has been attached to my testimony.

I would like to emphasize that these are the only functions that the Antideficiency Act permits to continue during an appropriations lapse. All other functions must cease and federal workers who perform non-excepted functions must be furloughed, even though these furloughed employees are essential. Let me be absolutely clear, the Antideficiency Act makes no distinction between "essential employees" and "non-essential employees" or between "essential functions" and "non-essential functions." Furthermore, our legal advice in no way called for agencies to make any such distinction.

In addition to the August 16 memorandum, the Office of Legal Counsel provides ongoing advice to the Executive branch, including the Office of Management and Budget and the President, concerning the legal standards that apply to Federal functions and activities during the period of a lapse in appropriations. We were not involved in monitoring agency compliance during the recent period of lapsed appropriations, nor was any other component of the Justice Department.

The subcommittee also has requested information concerning the Department's contingency planning and operational activities during the recent period of lapsed appropriations. As these matters are within the primary responsibilities of the Department's Justice Management Division, I have attached a document prepared by them that responds to these questions.

Thank you for holding this hearing on an issue of great importance to the American public and to federal employees. I would be pleased to respond to any questions the subcommittee may have.

Attachments:

OLC Guidance on Government Operations in the Event of a Lapse in Appropriations  
(Aug. 16, 1995)

Prepared statement of Walter Dellinger (Sept. 19, 1995)

Information on Contingency Planning and Operational Activities During Shutdown

OLC Guidance on Participation in Congressional Hearings During an Appropriations  
Lapse (Nov. 16, 1995)

Mr. MICA. Thank you, and we will get back to questions. At this time, I will recognize Allan Heuerman, Associate Director for Human Resources Systems Service of the Office of Personnel Management.

Mr. HEUERMAN. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to be here today to discuss the Office of Personnel Management's role in the partial shutdown of the Federal Government that began on November 14, 1995. The role of OPM under a government shutdown is to provide agencies with guidance and technical assistance related to the personnel management aspects of furloughing Federal employees.

Last July, based on media reports about the possibility of a lapse in appropriations, I, on my own initiative, instructed my staff to begin updating OPM's furlough guidance, which was last issued on August 15, 1990. On August 1, 1995, we distributed our updated guidance to agencies.

This guidance was in the form of questions and answers which covered a broad range of information on personnel management aspects of a furlough, such as information on procedures, the effect of the furlough on pay and leave and retirement and health insurance coverage, and other benefits. The guidance did not, because it is not within OPM's authority, include guidance on the kinds of activities which would be excepted under the Antideficiency Act during the lapse in appropriations.

After issuing this guidance, we engaged in continuing discussions with Federal agencies to help plan for a possible lapse in appropriations to assure that they were kept informed and up to date. Our activities included: OPM staff briefings for personnel at a number of agencies; weekly meetings of agency personnel directors, where we continued to address the personnel implications of furlough as new issues arose; arranged for representatives from OMB to speak on budgetary matters relating to shutdown; for representatives from the Department of Labor to discuss unemployment compensation issues; and for representatives from the Thrift Investment Board to discuss thrift savings plan issues regarding loans; we also distributed to agencies additional questions and answers pertaining to new issues on the personnel aspects of furlough; a Justice Department opinion on the 1990 changes to the Antideficiency Act relative to determining excepted and non-excepted activities; and information on unemployment compensation and thrift savings plans.

Prior to and during the shutdown, OPM responded to individual inquiries from agencies, employees, unions, and the media on personnel aspects of furlough. On November 17, we issued to directors of personnel questions and answers addressing leave issues affecting excepted and non-excepted employees.

On November 21, the day after the law authorizing retroactive pay was enacted and employees returned to work, we issued guidance on personnel documentation and on how to handle the pay and leave of employees for that period.

Mr. Chairman, you asked about the assumptions made by OPM with respect to the length of the shutdown. We made no assumptions and none were needed with respect to our guidance. Our Au-

gust guidance provided information on furloughs of 30 days or less and on furloughs of more than 30 days.

The reason for this distinction is that there are different provisions in law governing furloughs depending on the length of the furlough. Furloughs of less than 30 days require adverse action procedures; furloughs of more than 30 days require reduction in force procedures. Therefore, OPM's guidance was designed to cover both scenarios.

If, as a shutdown continued, it appeared that it would last for an extended period, we would encourage agencies to provide employees with additional information, such as on employee assistance programs and financial counseling. However, our basic guidance on the personnel aspects of furlough would remain the same.

You asked about the effect of a debt ceiling crisis on our guidance. The debt ceiling limits the government's ability to borrow cash and, therefore, our guidance dealing with furlough procedures would not be affected.

You also asked for a description of those OPM functions that were continued during the lapse in appropriations. OPM continued to carry out its responsibilities with regard to administration of Federal employee benefits programs, such as retirement, health and life insurance, background suitability investigations, and managerial and executive training.

These activities are funded out of either the retirement or insurance trust funds, or OPM's revolving fund, and so were not affected by the lapse in appropriated funds. OPM also conducted activities related to the orderly shutdown of both OPM itself and other Federal agencies.

With regard to the costs associated with the furlough, we estimate that the salary and benefits paid to OPM employees who were furloughed totals approximately \$1,238,700. We also incurred some incidental costs, such as printing, mailing, and travel in connection with the orderly shutdown.

We are providing you with all of the information you requested, including copies of all materials we issued in regard to the government shutdown and all pertinent documents associated with the shutdown at OPM.

I want to thank you for the opportunity to discuss this with you today, and I will be glad to respond to questions.

[The prepared statement of Mr. Heuerman follows:]

STATEMENT OF  
ALLAN D. HEUERMAN  
ASSOCIATE DIRECTOR  
FOR HUMAN RESOURCES SYSTEMS  
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
U.S. HOUSE OF REPRESENTATIVES

on

THE GOVERNMENT SHUTDOWN  
December 6, 1995

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY TO DISCUSS THE OFFICE OF PERSONNEL MANAGEMENT'S ROLE IN THE PARTIAL SHUTDOWN OF THE FEDERAL GOVERNMENT THAT BEGAN ON NOVEMBER 14, 1995.

THE ROLE OF OPM UNDER A GOVERNMENT SHUTDOWN IS TO PROVIDE AGENCIES WITH GUIDANCE AND TECHNICAL ASSISTANCE RELATED TO THE PERSONNEL MANAGEMENT ASPECTS OF FURLOUGHING FEDERAL EMPLOYEES.

LAST JULY, OPM BEGAN TO UPDATE ITS 1990 FURLOUGH GUIDANCE IN PREPARATION FOR A POSSIBLE LAPSE IN APPROPRIATIONS. ON AUGUST

1, 1995, WE DISTRIBUTED OUR UPDATED GUIDANCE TO ALL AGENCIES.

THIS GUIDANCE WAS IN THE FORM OF QUESTIONS AND ANSWERS WHICH COVERED A BROAD RANGE OF INFORMATION ON THE PERSONNEL MANAGEMENT ASPECTS OF A FURLOUGH. THE GUIDANCE INCLUDED INFORMATION ON THE PROCEDURES NECESSARY TO PLACE EMPLOYEES ON FURLOUGH, THE EFFECT OF FURLOUGH ON PAY, LEAVE, RETIREMENT, HEALTH AND LIFE INSURANCE COVERAGE, AND OTHER FEDERAL BENEFITS. IT IS NOT WITHIN OPM'S AUTHORITY TO PROVIDE GUIDANCE ON THE KINDS OF ACTIVITIES WHICH WOULD BE EXCEPTED UNDER THE ANTI-DEFICIENCY ACT DURING A LAPSE IN APPROPRIATIONS.

AFTER ISSUING THIS GUIDANCE, WE ENGAGED IN CONTINUING DISCUSSIONS WITH FEDERAL AGENCIES TO HELP PLAN FOR A POSSIBLE LAPSE IN APPROPRIATIONS TO ASSURE THAT THEY WERE KEPT INFORMED AND UP TO DATE. OUR ACTIVITIES INCLUDED:

- OPM STAFF BRIEFINGS FOR PERSONNEL AT A NUMBER OF AGENCIES.
- WEEKLY MEETINGS OF AGENCY PERSONNEL DIRECTORS WHERE WE CONTINUED TO ADDRESS THE PERSONNEL

IMPLICATIONS OF FURLOUGH AS NEW ISSUES AROSE; ARRANGED FOR REPRESENTATIVES FROM OMB TO SPEAK ON BUDGETARY MATTERS RELATING TO SHUTDOWN, INCLUDING EXCEPTED AND NONEXCEPTED ACTIVITIES; REPRESENTATIVES FROM THE DEPARTMENT OF LABOR TO DISCUSS UNEMPLOYMENT COMPENSATION ISSUES; AND REPRESENTATIVES FROM THE THRIFT INVESTMENT BOARD TO DISCUSS THRIFT SAVINGS PLAN ISSUES REGARDING LOANS.

DISTRIBUTING TO ALL AGENCIES ADDITIONAL QUESTIONS AND ANSWERS PERTAINING TO NEW ISSUES ON THE PERSONNEL ASPECTS OF FURLOUGH; A JUSTICE DEPARTMENT OPINION ON THE 1990 CHANGES TO THE ANTIDEFICIENCY ACT RELATIVE TO DETERMINING EXCEPTED AND NONEXCEPTED ACTIVITIES; AND INFORMATION ON UNEMPLOYMENT COMPENSATION AND THRIFT SAVINGS PLANS.

PRIOR TO AND DURING THE SHUTDOWN, OPM RESPONDED TO INDIVIDUAL INQUIRIES FROM AGENCIES, EMPLOYEES, UNIONS, AND THE MEDIA ON THE PERSONNEL ASPECTS OF FURLOUGH. ON NOVEMBER 17, WE ISSUED TO DIRECTORS OF PERSONNEL QUESTIONS AND ANSWERS

ADDRESSING LEAVE ISSUES AFFECTING EXCEPTED AND NONEXCEPTED EMPLOYEES.

ON NOVEMBER 21, THE DAY AFTER THE LAW AUTHORIZING RETROACTIVE PAY WAS ENACTED AND EMPLOYEES RETURNED TO WORK, WE ISSUED GUIDANCE ON PERSONNEL DOCUMENTATION AND HOW TO HANDLE THE PAY AND LEAVE OF EMPLOYEES FOR THAT PERIOD.

MR. CHAIRMAN, YOU ASKED ABOUT THE ASSUMPTIONS MADE BY OPM WITH RESPECT TO THE LENGTH OF THE SHUTDOWN. WE MADE NO ASSUMPTIONS. OUR AUGUST GUIDANCE PROVIDED INFORMATION ON FURLOUGHS OF 30 DAYS OR LESS AND ON FURLOUGHS OF MORE THAN 30 DAYS. THE REASON FOR THIS DISTINCTION IS THAT THERE ARE DIFFERENT PROVISIONS GOVERNING FURLOUGHS DEPENDING ON THE LENGTH OF THE FURLOUGH. FURLOUGHS OF LESS THAN 30 DAYS REQUIRE ADVERSE ACTION PROCEDURES; FURLOUGHS OF MORE THAN 30 DAYS REQUIRE REDUCTION IN FORCE PROCEDURES. THEREFORE, OPM'S GUIDANCE WAS DESIGNED TO COVER BOTH SCENARIOS.

IF, AS A SHUTDOWN CONTINUED, IT APPEARED THAT IT WOULD LAST FOR AN EXTENDED PERIOD, WE WOULD ENCOURAGE AGENCIES TO PROVIDE EMPLOYEES WITH ADDITIONAL INFORMATION, SUCH AS

INFORMATION ON EMPLOYEE ASSISTANCE PROGRAMS AND FINANCIAL COUNSELING. HOWEVER, OUR BASIC GUIDANCE ON THE PERSONNEL ASPECTS OF FURLOUGH WOULD REMAIN THE SAME.

YOU ASKED ABOUT THE EFFECT OF A DEBT CEILING CRISIS ON OUR GUIDANCE. THE DEBT CEILING LIMITS THE GOVERNMENT'S ABILITY TO BORROW CASH, AND THEREFORE, OUR GUIDANCE DEALING WITH FURLOUGH WOULD NOT BE AFFECTED.

YOU ALSO ASKED FOR A DESCRIPTION OF THOSE OPM FUNCTIONS THAT WERE CONTINUED DURING THE LAPSE IN APPROPRIATIONS. OPM CONTINUED TO CARRY OUT ITS RESPONSIBILITIES WITH REGARD TO ADMINISTRATION OF FEDERAL EMPLOYEE BENEFIT PROGRAMS SUCH AS RETIREMENT, HEALTH, AND LIFE INSURANCE; BACKGROUND SUITABILITY INVESTIGATIONS; AND MANAGERIAL AND EXECUTIVE TRAINING. THESE ACTIVITIES ARE FUNDED OUT OF EITHER THE RETIREMENT OR INSURANCE TRUST FUNDS OR OPM'S REVOLVING FUND AND SO WERE NOT AFFECTED BY THE LAPSE IN APPROPRIATED FUNDS. OPM ALSO CONDUCTED ACTIVITIES RELATED TO THE ORDERLY SHUTDOWN OF BOTH OPM ITSELF AND OTHER FEDERAL AGENCIES.

WITH REGARD TO THE COSTS ASSOCIATED WITH THE FURLOUGH, WE

ESTIMATE THAT THE SALARY AND BENEFITS PAID TO OPM EMPLOYEES WHO WERE FURLOUGHED TOTALS APPROXIMATELY \$1,238,700. WE ALSO INCURRED SOME INCIDENTAL COSTS SUCH AS PRINTING, MAILING, AND TRAVEL IN CONNECTION WITH THE ORDERLY SHUTDOWN OF OPM AND OTHER FEDERAL AGENCIES.

WE ARE PROVIDING YOU WITH ALL OF THE INFORMATION YOU REQUESTED, INCLUDING COPIES OF ALL MATERIALS WE ISSUED IN REGARD TO A GOVERNMENT SHUTDOWN AND ALL PERTINENT DOCUMENTS ASSOCIATED WITH THE SHUTDOWN AT OPM.

THANK YOU FOR THE OPPORTUNITY TO DISCUSS THIS TOPIC WITH YOU TODAY. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

Mr. MICA. Thank you, Mr. Heuerman and also the other witnesses today, for their testimony. I have a few questions to start out with, first for Mr. Koskinen.

Do you think that the Antideficiency Act is deficient?

Mr. KOSKINEN. Is which?

Mr. MICA. Deficient.

Mr. KOSKINEN. No, I think whatever modifications you make in it, I think ultimately you are dealing with a provision of the Constitution that provides that the executive branch cannot incur obligations without appropriations.

The Antideficiency Act basically, as I noted in my testimony, provides some very narrow exceptions for having employees perform emergency activities and other activities. It does not provide any exceptions, and cannot, to the constitutional requirement that we can't make any payments and can only incur very limited obligations in the absence of an appropriation.

If there is any deficiency, it is in fact in our inability to produce either appropriation bills or continuing resolutions to avoid this problem. As I said, we avoided it for 200 years. It is not quite clear to me why suddenly it has become a term of art.

Mr. MICA. I think everyone who has testified today has said that shutdowns have been sort of a way of life of governing the past 10, 12 years, given the fact that I guess it has occurred on at least 10 occasions. The difference, I think, in this particular shutdown was the duration.

Mr. KOSKINEN. Yes.

Mr. MICA. One of the things that we heard from the previous panelists was a variety in their plans for such an eventuality. Some prepared, it seems, short term and long term.

Do you feel that the guidelines that you issued or were requested to prepare were sufficient and how they responded was adequate? Then we saw a great disparity between the plans. As I did in the presentation of this 184 pages of Department of Labor versus the 2 pages and 30 page addendum for HHS.

What is your reflection on this?

Mr. KOSKINEN. My reflection is the agencies were advised that they should plan for a short shutdown, in light of the history that we had never had a shutdown for more than 1 or 2 days. When an agency asked for more detailed guidance we said, as you heard, that it would be in the range of 5 to 7 days.

All of the plans and all of our discussions with them contemplated that, if the shutdown lasted longer, it would begin to cause people to have to re-examine developing emergencies in their activities. It did not surprise us and, in fact, we encouraged the agencies as the first week drew to a close, to review their plans in light of the unprecedented nature of the shutdown.

I would note, a question was raised about your other point about the difference in the size of the plans. The agencies have been required to maintain shutdown plans since 1980.

The guidance from Director Rivlin on August 22d specifically notes that the purpose of the review was for the agencies to review those existing plans in light of the new legislation and the updated Attorney General's opinion provided by the Office of Legal Counsel, and make whatever changes seemed appropriate.

In the case of some agencies, they went back, as Labor did and redid their plans entirely. The Defense Department, perhaps for the first time in history, actually developed a shutdown plan. Other agencies, like HHS, that had relatively straightforward questions and pre-existing plans had an easier time of it.

It was left to the discretion of the agency to determine how much work was necessary to update their pre-existing plans.

Mr. MICA. One of the other points that you raised, that one of the reasons for different degrees of shutdown was, in fact, the legal parameters that have been established. One of the areas mentioned today, that stirred some controversy, has been Social Security.

I have this Department of Justice Office of Legal Counsel memorandum that was prepared August 16, 1995, and the subject is "Government Operations in the Event of a Lapse of Appropriations," and then it goes on. It is pretty lengthy, and it defines some terms. I think you might be familiar with it.

It says, "Multi-year appropriations and indefinite appropriations." Let me quote from it. It says: "Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriation provisions that do not require passage of annual appropriations legislation."

I am not an attorney, but I would interpret that that they could go on.

"Social Security is a prominent example of a program that operates under an indefinite appropriations."

Given this guideline, prepared from the administration, and then the Social Security commissioner, who furloughed what, 60,000 employees—is this a difference in understanding of the legal parameters; or how do you interpret these actions?

Mr. KOSKINEN. The original opinion by Attorney General Civiletti, which drew the distinction and discussed Social Security, talked about situations where you have ongoing continuing obligation authority, as Social Security does.

In those cases, it said, by implication one could assume that limited administrative functions, even though not funded, could continue. That is the basis under which, historically, Social Security benefit checks have been issued.

The question is, beyond the limited administrative functions of paying existing beneficiaries, can you, at the start, have an exception—because of an emergency activity or otherwise—for the processing of and the volume of work that is done in new applications.

Social Security's judgment in their plan, and it was very clear in their plan, was that they did not think that, as Administrator Chater said, for the first day or two, there was an emergency or that that would be the kind of work that would be excepted under the Attorney General's opinion.

On the other hand, it was clear, as Administrator Chater said, once we got into the unprecedented shutdown because of the inability to provide a continuing resolution, after several days, what had been tolerable for a day or two became intolerable over time. It began to create an emergency. That was their legal judgment under the basic original Attorney General's opinion.

The original opinion talks about ongoing obligation authority and limited functions derived by implication from that.

Mr. MICA. Do we need changes in the law to ensure that some essential activities continue? It seems that there is adequate authority because, in fact, some of these things were restored by fiat.

Mr. KOSKINEN. They were not restored by fiat. They were restored because of a determination that an emergency had developed with the passage of time. That is not fiat.

Mr. MICA. Well, but someone must have the authority; the President or the administrator has to have that legal authority.

Mr. KOSKINEN. Correct.

Mr. MICA. It can't just suddenly appear.

Mr. KOSKINEN. No. That is why it is not fiat. There is a set of legal guidelines that give you a determination if you determine that a function, at any point in time is necessary because it is an emergency.

Mr. MICA. We have basically a moving target, then?

Mr. KOSKINEN. Of course.

Mr. MICA. You don't need additional clarification; what is in law is adequate?

Mr. KOSKINEN. The law has been changed in the past. It certainly can be changed going forward. As I say, the last change in the law was an attempt to restrict and make it clear that the Congress intended that the only emergency actions were imminent threats to life or property. That was what we updated; and the Congress has spoken, and said that this is to be narrowly defined. A criminal penalty applies otherwise.

If the Congress decided to take another tack, that could be done and there is nothing that would prevent them from doing that, if the Congress so decided. Several proposals are before the Congress to either provide permanent continuing resolutions or permanent payments afterwards or even to redefine, in the Congress's judgment, what an appropriate exception is. The Congress can do that.

Mr. HORN. Would the gentleman yield?

Mr. MICA. Yes, I will. I know you have some interest in this area; and the witness referred to you while you were out of the room, so I will yield.

Mr. HORN. The chairman has raised a fascinating question. As the opinion of Assistant Attorney General Walter Dellinger, a distinguished scholar of the Constitution, goes on, he says, "In such cases, benefit checks continued to be honored by the Treasury because there is no lapse in the relevant appropriation."

My query is, are employees of Social Security paid out of the same trust fund that the checks are paid out of?

Mr. KOSKINEN. My understanding is no, that they are in fact free-standing. They are paid out of an S and E account that is an appropriated account.

Mr. HORN. When Mr. Dellinger wrote this multi-year appropriation, you are saying that his definition that some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation, you are saying that it is one thing to pay benefit checks, it is another to pay people; is that correct?

Mr. KOSKINEN. If you look on page 4 of his opinion, he says—and referring back to the 1981 opinion, it said, “It contemplates that a limited number”—I would quote—“a limited number of government functions could continue.” The next sentence says, “Examples include the check-writing and distributing functions necessary to disburse the benefits that operate under indefinite appropriations.”

That is what Social Security continued to do. There was never a threat to existing benefits. The exception is to a limited number of functions and the example has always been check-writing. The issue facing Social Security was, for the first few days, would it be a legitimate interpretation to say, “Will we have thousands of workers necessary to process new applications?”

Their interpretation of that situation was that that was not an exception created for emergencies until, with the passage of time, we passed into an unprecedented area where, in fact, now we had a backlog that was an emergency.

Going back to day one, if we started and you told me we were going to shut the government down for 1 day, would Social Security have people there, I would say our position would be to ask Social Security, “Is that going to create an emergency?”

Their answer the first time was no; they would again, in light of the experience, be able to answer it, but it would not be inconsistent for them to say, “We can tolerate the situation for 2 days; we cannot tolerate the situation for 5.”

Mr. HORN. Is it not true that the Financial Management Service of the Treasury writes the Social Security checks?

Mr. KOSKINEN. That is my understanding, but actually, FMS writes those checks in response to information forwarded by Social Security.

Mr. HORN. Absolutely, but there is also a payment to the Treasury by Social Security for that service, is there?

Mr. KOSKINEN. A payment for the check-writing function?

Mr. HORN. Yes.

Mr. KOSKINEN. At some point, surely.

Mr. HORN. That includes the employees in the Financial Management Service that have to get those checks processed?

Mr. KOSKINEN. That is right. Both the FMS employees and the Social Security employees necessary to process the benefits for check-writing are excepted under the Attorney General’s opinion.

Mr. HORN. Right, under the Dellinger opinion, those are excepted.

Mr. KOSKINEN. No, it is actually under the Civiletti opinion. It has been the rule for 14 years.

Mr. HORN. Yes. OK. Well, I notice in your testimony, at the bottom of page 2, you say, “The Social Security Administration was forced to turn away 112,000 claim applications.”

Everywhere else you say, in the case of Medicare, “40,000 individuals were delayed in enrolling in Medicare.” You go on to talk about the Park Service—another beef I have—“More than 2 million visitors were denied access to the national park services”; “More than 80,000 passport applications were delayed”; “More than 80,000 visas to visitors who spend an average of \$3,000 on their trips were delayed”; et cetera. Then you get down to customer service, Internal Revenue, “were halted.”

Social Security, you say, "was forced." The only person that forced them was the commissioner of Social Security that made the decision and OMB that backed her up.

Mr. KOSKINEN. Because they made a determination that, under the law, the law passed by Congress, that was the action they had to take. It goes back to the chairman saying if you would like to change the law, that is open to you. That was an interpretation, their judgment, in response to, as I say, the threat—as Secretary Muñoz noted—that, if you make a violation, you are, in fact, subject to criminal penalties.

The fact that nobody has been prosecuted that I know of, because we have never had a shutdown that lasted more than 5 or 6 days, does not seem to me particularly of great comfort to anyone you are asking to make these judgments.

Mr. HORN. Yes. Well, Mr. Chairman, we obviously have a clear case where your committee can render a service to straighten out the law on this subject one way or the other.

Mr. MICA. Again, a number of questions have been raised. I am wondering whether we should file criminal charges against those gardeners at VA that were non-essential.

Mr. KOSKINEN. It is my understanding that, as noted, that 10 percent of the 200,000 or 220,000 who work in the VA hospitals were furloughed and, in fact, my understanding is non-emergency activities like gardeners were furloughed. You will hear from VA, but my understanding is they actually looked at that question in terms of what were support services necessary to support the emergency activities.

Mr. MICA. The same thing relates to PR shops. We have thousands of PR people in the various agencies. Someone could make a case for going after some of these folks that did keep their shop open and that were non-essential and should be charged with a criminal violation.

Mr. KOSKINEN. First of all, they would be non-emergency, not non-essential. Second, you heard from six different agencies here, all of whom said they made substantial cuts in their Public Affairs Departments. They will all provide you with those numbers and, I think, in fact, they are prepared to stand behind those.

I do not think it is fair to assume that there were violations of that law.

Mr. MICA. The folks that we did hear from—there are other agencies, and activities—I was stunned at the number of PR and public information officers that we have throughout the vast number of agencies and activities.

One other final point is, we have gone through one shutdown and it has been the longest one in history. Next Friday, we may be facing another one and it may be a very long shutdown.

I also heard testimony—and I am not sure, maybe you could define it—that your agency, OMB, has requested an additional update, based on the experience of bad experience. Was that the 10th? Someone said the 10th?

Mr. KOSKINEN. This Sunday evening we want them, so that we will have the full week to review them.

Mr. MICA. OK, that's 5 working days, I believe. Do you feel that is enough time? Because one of the agencies, HUD, said they had

asked for an opinion from you relating to some grant programs, in the timeframe prior to the shutdown, and did not get a response.

Do you think that you can adequately respond, review their plans, and get back to them by the 15th?

Mr. KOSKINEN. Yes. Again, as I said, the irony of this is, on the one hand, we have been attacked for having spent too much time in planning. I think the appropriate response is, the agencies have, we think good plans. We have asked them to review them because we think it is appropriate to be prepared for the following Friday.

We do also think that, even before this, we have asked the chief financial officers, the President's Management Council, and other interagency groups, to give us their response over the last month of experiences they had—the "lessons learned," as we are calling them—and we think we will be able to respond and we will be able to run—if necessary, which we hope it is not—again an efficient and effective shutdown.

It is not exactly one of the things we would like to be involved in.

Mr. MICA. If you think you are having problems being charged with doing too much or too little, you ought to join the new majority in Congress. We get criticized for either doing too much or too little, too.

Mr. MORAN. I think you ought to think twice about that. [Laughter.]

Mr. MICA. With those comments, I defer to the ranking member for questions.

Mr. MORAN. Thank you, Mr. Chairman.

John, will OMB support the legislation that I have introduced that will keep Federal employees at work and get reimbursed after the fact in the same way that 60 percent of Federal employees did this last time?

Mr. KOSKINEN. Yes. We are in favor of whatever we can do to provide continuity in management of the government and, to the extent that we could avoid unnecessary shutdowns and termination of important work, we think that would be an important step forward.

Mr. MORAN. You would support H.R. 2184 that does that?

Mr. KOSKINEN. We have not cleared that bill through our normal processes but, in my personal opinion, yes, we should support that.

Mr. MORAN. I am glad to hear that, although we have very little time. I think that, if the White House was to support that, it would help.

By my calculations, as of December 15th, we would only be worrying about 10 percent of the Federal work force not going to work?

Mr. KOSKINEN. Our estimate is that, if the situation holds that exists today, and there were a shutdown the end of next week, without further appropriation bills passing, assuming the plans—the agency plans—were consistent with their previous plans, we would be looking at furloughs in the range of 330,000 to 350,000 employees.

Mr. MORAN. Why? That doesn't make sense.

Mr. KOSKINEN. You have several large agencies. You have State, Justice, Commerce whose appropriation bill has not passed; you have the VA, HUD appropriation bill has not passed; you have

EPA, which has not passed. As part of that, you have NASA. You have a number of very large agencies that do not have appropriations.

Labor, HHS I guess is the third. When you take the Labor Department, HHS, State, Commerce, and Justice, EPA, Department of Education and NASA, you have a fairly significant number of agencies that will not have appropriations.

Mr. MORAN. What I did was to assume that VA, HUD will not pass; Labor, HHS will not pass; Interior will not pass.

Mr. KOSKINEN. That's right. State, Justice, and Commerce.

Mr. MORAN. State, Justice, and Commerce will not pass, is my assumption, that it is going to get vetoed. It will come to us this afternoon and, when it gets to the President, I think he will veto it.

I made those assumptions, and then took the number of employees who were furloughed in each of those agencies, and that adds up to something less than 200,000 Federal employees.

Mr. KOSKINEN. I would be delighted to share with you our calculations.

Mr. MORAN. OK. I would very much be interested in that, because it certainly impacts not necessarily on what is the right policy, but it certainly impacts on the consequence of that policy, if we are only talking about less than 200,000 versus three to four hundred thousand.

Either way, I think this is the time to set in motion a policy that would prevent the type of situation that occurred last month from recurring, but I also think it is important to know the scope, the depth of the impact of a lapsed appropriation.

I think it is terribly important for the White House to give some expedited review of H.R. 2184 that would keep Federal employees at work. I would like to ask you, would you anticipate a change in the proportion of employees who were furloughed the last time the government shut down versus those that you would furlough as of December 15th if there was a recurrence of a lapsed appropriation situation?

Mr. KOSKINEN. We can't answer that question until we hear back from the agencies. Again, our process from the start, beginning in the middle of August, has been to rely on the agencies and their counsel and their managers to make the judgments. I assume we will rely on them to make their adjustments according to what they now know. Nothing has occurred that, thus far, would lead me to conclude there will be significant changes.

Mr. MORAN. I understand that, but you need to hear from the agencies. We just heard from the agencies, shall we say the commissioner of Social Security used the analogy of a leaking roof and that, if it goes very long, you have to put far more people back to work to ensure that you don't have a chaotic situation.

In the testimony from the deputy secretary of HHS, he indicated that a second shutdown would necessitate more people being employed. That seemed to be consistent with the opinion of all of the agency representatives we heard from this morning.

One reason might be that this could occur at a time when you have to prepare for the issuance of major grants, like the AFDC and Medicaid and social services, Head Start, and the like; so you

would need to have those people on board, which you didn't in early November because they had just been issued for the first quarter of the fiscal year.

I am assuming that there would be a change in terms of the proportion of people furloughed and that, in fact, that change would reflect the need to have a higher proportion of the work force on board in the event of a second lapsed appropriation period.

I think we need to look at that, and I would like to see your figures, because they don't jibe with mine. It would appear that, at the very most, you wouldn't have more than 200,000 people furloughed out of a total of something over 2 million. Do you want to comment on that?

Mr. KOSKINEN. I will share those with you. As I say, they are subject to change, and that is why we have asked the agencies formally to give us their updates. Our number is over 300,000; and I will share that with you.

Mr. MORAN. OK. We need to look at that. What measures is the White House or OMB, in the sense of recommending to the White House, taking to avoid the kind of chaos that occurred during the first government shutdown, in other words, to create a different situation? How have you learned from the last experience to improve?

Mr. KOSKINEN. I guess, first of all, I would challenge the question of whether it was chaos. Actually, as the one who fielded all the calls for the 10 days and responded to the agency inquiries, it appeared to us that, in fact, and the agencies' response was, that the shutdown ran smoothly.

Some of your constituents, I understand, have given you anecdotal information otherwise. Our judgment is that the agencies made the right judgments, and they informed their employees in a proper time. Clearly, this time around, everyone who was a non-emergency employee the last time will have fair notice of that.

As I say, it is not my goal in life to say "The trains ran on time," but the shutdown, we think, ran efficiently and effectively. We are prepared to do it again if necessary.

We think it would be a major unfortunate and hopefully avoidable event, and we would hope that the Congress, if it cannot complete the work on the appropriation bills by the middle of December, would pass a continuing resolution to allow the government to continue to function.

Mr. MORAN. I understand that. I would agree that "chaos" is too strong a term. I think that OMB did a commendable job in many areas in preparing for this. It could have been a far more chaotic situation had OMB not been as well-managed and communicating as well with the agencies, almost all of whom reacted in a responsible, professional fashion.

A more appropriate term would be "imperfections" in the process. I think, and I would hope that you would agree, that there were some areas that could be improved upon were this to occur. The first would be how do we prevent it from occurring, whether through legislation that would keep employees at work—which I have mentioned—or more advance notice, those types of things.

I don't want to put words in your mouth, but I would like to get a sense of how things are going to occur on December 12th, 13th,

14th, and 15th versus how things occurred on—what was the date, November 12?

Mr. KOSKINEN. 13th and 14th.

Mr. MORAN. Yes.

Mr. KOSKINEN. Well, as I say, I think to the extent your constituents have talked to you, in any particular agency, it is up to the agency to make sure employees receive appropriate notification.

As I say, that problem is mooted to some substantial extent because the people who were non-emergency employees in November obviously are on notice that they are likely to be non-emergency employees in mid-December, subject to changes by the agencies.

We think that the guidance was clear. We need to make clear the area in which we are working with the agencies to make clear is this issue about funding activities, that if you have an ongoing obligation authority, such as Social Security or programs that have been adopted this year by the government, then you can, in fact, make payments.

The question is, if there has been no obligation this year, it is an obligation of prior years, then some agencies, a couple of agencies decided they could spend S and E or incur S and E obligations in this fiscal year, even though there was no congressional action in this year.

Most agencies took the other tack, which was consistent with the advice we gave, and we will make sure that there is consistent response to that, and we will review the agencies' plans, because again, to the extent that they think, on the basis of what their experience was the first time around, they want to make changes in those plans, that is what we are encouraging them to do.

Our instructions from the start—and it goes back to the question Congressman Horn asked—from the start, in August, with all the meetings we had and all the guidance we gave, our instruction to the agencies was to take the legal guidance, take their earlier plans, and play it right down the middle. We did not reach to go in one direction or another.

We think that—and I continue to believe—this is too serious a matter to run the risk of being legitimately accused of having shut down more of the government than is legally necessary, and that decision has to be made initially by the agencies.

On the other hand, I understand several of the Members here today have said there are a number of activities that people are unhappy about having shut down. Congressman Horn talked about being unhappy that people could not go to the parks. Again, those are not judgments we make. Those are legal decisions that are required by the statute, and our role here is to simply apply the law as best we can.

Mr. MORAN. I understand what you are saying. I do think, though, that they are judgments. They may be legally oriented judgments, but it is still a judgment call.

Another judgment call is with regard to when grants go out, because there is a certain amount of discretion in terms of when grants are awarded. I would hope that the grants folks would be busy right now making sure that there is a minimal disruption.

I don't think that they should be granting the whole year's funding level if that is not the custom, but I would hope that those

grants, that could go out within a period between say December 10th and December 30th, would go out on December 10th—I am just suggesting that—to cause minimal disruption out in the field with grantees.

I would think our objective would be to cause the least suffering possible, the least disruption, the least chaos.

Another area where I would think there might be value in some feedback is those employees who had to remain on the job might have got a better sense of how many other employees and which employees were also necessary, given the work that had to be handled during that interim 4-day period. I would think that that would result in some adjustment of the numbers of people furloughed and who would get furloughed.

Has there been any of that type of adjustment that has gotten back to you from any of the agencies?

Mr. KOSKINEN. My understanding is the agencies have done, in some cases, very detailed reviews of the experience of the shutdown. We have encouraged them all to do that, not necessarily to plan for the 15th. One of the things we hope to leave behind is more guidance and more easily accessible material, so the people don't have to reinvent the wheel next time around.

The last time OMB looked at shutdown plans, for instance, was 1985. We think that we will leave behind, both at the overall level at OMB and the Justice Department, clear records of what happened, but we are encouraging the agencies to do the same thing.

I think we will get more efficient at this although again, as I say, in the long run, the bottom line is you have to understand that, in these situations, the Congress has made a decision not to fund the agencies. We do not have the funding. We do not have authority.

We are looking at narrowly defined exceptions, keeping emergency activities going. It's not that anybody—and that is why, as I say, the distinction between "non-essential" and "essential" evaporates as you listen to the comments made across-the-board about things that people think are very important that cannot be done because, legally, we have not been authorized to do them.

The question really is, the only window in the statute are what are the emergency exceptions for imminent threats to life or property. There is a significant amount of important work that gets done by the government.

If there is any positive to this shutdown, I think more and more Americans discovered that, contrary to some of the assertions made around about "Well, nobody noticed," that there were significant amounts of activities that were not done because, in fact, the government had shut down.

Mr. MORAN. I appreciate what you are saying, and I also support what you have been doing; but 60 percent of the Federal Government doesn't fall under the category of imminent threat to safety and protection of property. I don't argue with the legal basis of what you're saying, but the interpretation was much broader than what is in the law.

I prefer that interpretation, and I support it, and I think the majority of the Congress would, but I think it is a valid point to make that there is a certain amount of judgment and discretion involved here, and I would hope that we would continue to exercise that

judgment and discretion and, as I suggest, minimize the disruption to people's lives.

We are not just talking about Federal employees. We are talking about the lives of American citizens who pay their taxes and have a right to have that money spent in the way that they have come to expect and should be able to.

Mr. KOSKINEN. That's right. Again, the chairman's comment will reverberate through the system and, as Mr. Muñoz noted, every counsel in every department reminds all of the people making these judgments that it is, in fact, a statutory requirement with criminal penalties.

I know the chairman was not necessarily totally serious but, when you say, "Should we provide prosecution for people who kept too many people in X, Y, or Z positions," a perfectly legitimate approach, but the answer is, you can't, there are judgments, but you have to understand this is—as I have told the agencies—this is not beanbag, this is actually serious matters that affect, as you say, life and property, that affect the interests of the public.

It is one of those things we should bear in mind when we ask questions like, and as the others have suggested, that we could have a shutdown for 30, 60, or 90 days, and what difference would it make? The difference it would make is, it would bring home even more significantly, as I noted in my testimony, even after 10 to 14 days, the really catastrophic effects of talking about shutting down the government.

We ought to not gratuitously reach out to create any more problems than we have to. But you have to understand that we are operating against the backdrop of the Congress not providing authorization at all for any activities, except emergencies.

Mr. MORAN. I understand the backdrop. I have read the legal analyses. I am just suggesting we exercise as much good judgment as we are capable of, which is a lot of it, and we don't necessarily maximize our capacity for good judgment in every situation all the time.

I just have one quick question for OPM. You have all the health care plans, FEHBP. The open season is just closing. There is a lot of switching that has been going on this year because of the increase in premiums. Is there going to be any problem in getting those affected on time by OPM if there is a shutdown on December 15th?

Mr. HEUERMAN. No, there will be no impact, because, in terms of December 15th, OPM does have an appropriation, and so all of our employees will be working.

Mr. MORAN. I thought they come from the agencies first, but I guess they go directly to OPM, and you can make the changes necessary for the agencies by whom the people are employed?

Mr. HEUERMAN. Yes, I believe so; I believe that is the case.

Mr. MORAN. You think you can? OK. Thank you.

Mr. MICA. I thank the gentleman. I think we are getting a clear definition here, Mr. Moran. I think we can't jail the gardener, but we can jail the VA administrator who told the gardener to go to work.

Mr. MORAN. For those gardeners who may be watching this, I don't think you are likely to be incarcerated any time soon. [Laughter.]

Mr. MICA. I yield to the gentlelady from Maryland.

Mrs. MORELLA. Three strikes, and you are out. I just wanted to ask, perhaps Mr. Schroeder, I wondered if you might elaborate on the issue of the interruption of the private economy, what the implications are in a shutdown.

Mr. SCHROEDER. Well, in trying to assess what government functions can legitimately stay in operation under the law when there is a lapse in appropriation, one of the cases you confront which raises this issue most starkly is the FAA air traffic controllers.

So long as planes are flying, those individuals are obviously performing functions that are necessary to avoid imminent threats to the safety of human life; and as long as you make an assumption that they will stay operating, we believe there is a valid justification under the law for keeping people in that kind of situation at their posts, even when there is a lapse in appropriations.

It has been, from time to time, raised or speculated during prior shutdown experiences that the only justification under the law with respect to the FAA was to have them operate for whatever period of time it took them to safely land all the planes that were then aloft, so that after 3 or 4 hours, all the FAA employees in the various air traffic posts around the country who didn't have appropriated funds should walk off their jobs because they didn't any longer satisfy the emergency exception.

We thought, and Attorney General Civiletti thought, and it has been a consistent interpretation of past administrations that, in the situation of a short shutdown, it is legitimate to assume that private activity over which the government doesn't have any direct legal control will continue operation. So, instead of sending out a warning to passengers all around the country, don't fly after the first 3 hours of shutdown, because the FAA controllers aren't there, we have made the other assumption, that we should assume that that activity will keep going, and that was beyond the legal requirements of the statute to literally close all of the commercial and non-commercial air traffic in the country.

Mrs. MORELLA. How did you determine what Federal contracts should be continued or held in abeyance during the shutdown? Obviously, there is a tremendous impact on the private economy when we have a shutdown. I am wondering how those determinations were made.

Mr. SCHROEDER. Well, there again, the fundamental legal guidance that we provide relates to drawing a distinction between contracts for which there is funding and contracts for which there are not.

Mrs. MORELLA. Right.

Mr. SCHROEDER. Under normal appropriations practice and under the terms of the Antideficiency Act, where the funding is absent for the contract, there is no authorization for the agency to continue incurring obligations during a period of lapse of appropriation. If a contract is funded with multi-year or no year or indefinite appropriations, then those contracts can continue.

Mrs. MORELLA. So, other than the FAA, purely on the basis of whether there is funding?

Mr. SCHROEDER. Excuse me?

Mrs. MORELLA. Except for the FAA, purely on the basis of whether or not there is an appropriation, whether there is any funding for it?

Mr. KOSKINEN. That's right, with one small exception, and that is, it is possible that contractors could be performing excepted activities for emergencies.

You may have building guard contracts or others where there may not be legal authority otherwise, as Mr. Schroeder said, to continue the contract, but the function that they are performing is an emergency function and, therefore, you can incur that obligation going forward.

Otherwise, in the absence of funding, obviously, those contracts terminate.

Mrs. MORELLA. Fine. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady, the ranking member and other colleagues, for their participation today. I want to also thank our witnesses.

First of all, we do have additional questions, Mr. Schroeder, or Schroeder—I will cover my base there with both pronunciations.

Mr. SCHROEDER. I actually respond to either.

Mr. MICA. Either one? You should hear what I have to respond to sometime. [Laughter.]

In any event, since we got your testimony later, we will have some additional questions, probably from both sides of the aisle.

Mr. Koskinen, of OMB, if you could send the subcommittee, as soon as you get that, any revised plans from the agencies, we would appreciate that, so we have an opportunity to review what you are reviewing. Mr. Heuerman, if you have any instances of overtime being paid, according to the memorandum which you issued, the subcommittee would also like that. We will have some questions on that and also, if you intend to keep this guideline, for paying overtime.

Mr. HEUERMAN. I might just mention in that regard, Mr. Chairman, that that guidance is the same guidance that had been issued back in 1986 and 1990, based upon the same statutory language authorizing retroactive pay, which talks about paying people based on their standard rate of compensation.

Mr. MICA. I think that might be something we want to look at, so we will have additional questions. I appreciate your participation in the hearing as witnesses. It is a very serious business, government shutdown.

This subcommittee doesn't have the authority or the charge to determine whether or not there will be a shutdown, but we certainly have the responsibility, if there are shutdowns to determine, one, how we are prepared for it; two, what we have done in the past and what we are preparing for in the future; and also that we act in a responsible manner, both for the public who depend on these services and benefits and activities, and also to fulfill our responsibility as Members of Congress.

We thank you for your participation. Yes?

Mr. HORN. I would like to just say one last word. I think the impression has been given that we have been looking for finding fault, because this was a hearing to determine how the shutdown was implemented.

It would be appropriate for the last word to be one of congratulations to the gentlemen here, particularly, and the agencies they represent, in particular to Mr. Koskinen, who was responsible for the operation of the government shutdown from OMB. He has the management section of OMB, and really did do an outstanding job.

I think by any reasonable measure you performed with brilliance in a very challenging situation, so I would like to make that point.

Last, Mr. Chairman, I want to ask you publicly, do you think we could mark up a bill that would enable Federal employees to stay on the job rather than stay off the job and get paid nevertheless?

Mr. MICA. That is one thing that we should consider, and we will have the opportunity to hear from you and other individual Members who have suggestions. There are some lengthy suggestions and detailed suggestions for some improvements in the process.

I hope we can reconvene this subcommittee on that subject next week and, hopefully, make the changes that are necessary in the law. You don't have to be a political scientist to realize that there, in fact, are some tremendous differences of opinion with this Congress, this administration, with the new freshman class, to see that we could have more instances of what we experienced just a few weeks ago.

We should be prepared for it and we will consider that legislation.

There being no further business to come before the subcommittee, this meeting is adjourned. Thank you.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional information submitted for the hearing record follows:]

DAVE WELDON  
15TH DISTRICT, FLORIDA  
COMMITTEES:  
SCIENCE  
VICE CHAIRMAN, SPACE SUBCOMMITTEE  
ECONOMIC AND EDUCATIONAL  
OPPORTUNITIES  
VICE CHAIRMAN, OVERSIGHT  
SUBCOMMITTEE  
REPUBLICAN POLICY  
COMMITTEE

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

December 13, 1995

WASHINGTON OFFICE  
216 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3671  
DISTRICT OFFICE:  
BREVARD CO. GOVT. COMPLEX  
2726 ST. JOHN ST.  
BUDG. C.  
P.O. Box 410007  
MELBOURNE, FL 32941-0007  
(407) 832-1778

The Honorable John Mica  
336 Cannon HOB  
Washington, D.C. 20515

Dear John:

I want to share the attached letter with you for use in your hearing on the federal shutdown.

I have received calls and letters from several of my constituents and others around the country who received this letter and were upset by the tone and the political nature of it. They expressed to me that the President and the Vice President have no business politicizing the federal workforce and trying to make political gains by distorting the realities of the shutdown.

When I first saw this letter I believed it to be a hoax. I thought for certain that the White House would not draft a letter of this nature and tone. I was shocked when my staff confirmed with the Legislative Affairs Office of the White House that this letter was indeed authentic. We were told that it originated in the Office of the Vice President.

I appreciate your efforts to expose the abuses of the Clinton Administration and hope that this letter will assist you in this effort.

Again, thank you for your attention to this matter

Sincerely,



Dave Weldon  
Member of Congress.

*Confirmed by  
Lucia Wyman  
456-2604 -  
W.H. Liaison Office  
Week of Dec 4*

Open Letter to Federal Employees  
from  
President Clinton and Vice President Gore

We are proud of the people who work for the federal government. Any Fortune 100 company would be lucky to have such a work force. Your work makes all Americans more safe, free, and prosperous. We are glad you are all back on the job.

We know it hasn't been easy for you, wondering when and if you would get your next pay check. And many of you had to bear the indignity of being called "non-essential," — some by government critics, some even by your own supervisors. Calling furloughed workers non-essential is deeply offensive and just plain wrong. The law forced us to furlough 800,000 workers whose jobs were not of an emergency nature. The law says nothing about "essential."

No one could say that medical research is non-essential. Or helping Americans go to college. Or rehabilitating a million disabled Americans. Or supporting the widows and orphans of veterans. Or keeping our drinking water safe. Or recruiting new volunteers for the armed forces. Or any of the long list of essential government activities that had to be temporarily suspended. In the short term, they were not emergencies, so the law prohibited them. But they remain clearly essential.

You all know that the law under which most of the government is operating expires on December 15th, and the debate that led to the November shut down is not over. We can't promise you that your jobs and your lives won't be interrupted again. Too much is at stake for America. If you are held hostage again, we know you would not want us to forfeit the nation's future as ransom.

So, until this issue is settled the way we settle great issues in a democracy — through peaceful debate and compromise — you remain good people caught in what Churchill called "the worst system of government devised by the wit of man, except for all the others." And when it is settled, it is you federal workers who will once again carry out the will of the people, who will once again make it possible for America to be the winner. We salute you, and we thank you.

(signed)  
Bill Clinton

(signed)  
Al Gore

November 22, 1995



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR  
FOR MANAGEMENT

February 5, 1996

The Honorable John L. Mica  
Chairman, Subcommittee on Civil Service  
Committee on Government Reform and Oversight  
U.S. House of Representatives  
Room B371C Rayburn House Office Building  
Washington, DC 20515-6143

Dear Chairman Mica,

This is in response to your letter of January 18, 1996 (which arrived January 26, 1996) in which you pose a number of questions about government shutdowns. I am pleased to provide the following answers in the order of your questions.

1. OMB's role in planning, implementing, and overseeing the shutdown was not substantially modified between the November and December shutdowns.
2. With respect to changes in agency operating plans, enclosed is a copy of my letter to you of December 22, 1995 which transmitted revised agency shutdown plans.
3. With respect to our assurance of adherence to OMB guidance, OMB program examiners interacted with their agency counterparts in standard ways. There were no substantial changes in these procedures during the second shutdown with the noteworthy exception that some agency contacts were furloughed which made communication more difficult.
4. OMB does not have records for agency pay, including overtime or other premium pay. The best source of such information is each individual agency.
5. OMB did not interrupt its own operations nor furlough employees in the December shutdown because the relevant Appropriations bill had already become law.
6. There were no changes in OMB operations during the lengthy second shutdown, but there was a significant delay in those activities that require interaction with shutdown agencies. For example, preparation of the FY97 Budget was significantly delayed. OMB did not provide any revised guidance concerning a longer shutdown because the original guidance asked agencies to review plans for both a short and a more protracted interruption of agency operations.

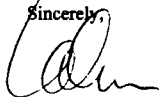
7. Attached is a short document summarizing the estimated costs of the two shutdowns. Please note that the attached document contains illustrations of the impacts of the shutdown, but does not represent a comprehensive audit of all effects of the shutdown.

8. Attached are two tables which provide estimates of the number of employees furloughed and the number of employees working during the two shutdowns. In general, funding for employees who worked and were paid during shutdowns came from carry-over balances, enacted full-year appropriations bill, and fees which were already appropriated or were otherwise available without further annual appropriation action.

9. Each agency is responsible for dealing with the backlogs of work which accumulated during the shutdown while accommodating employees' use of annual leave. OMB does not have special procedures for monitoring such agency activities.

I hope that the enclosed information addresses your questions and concerns. Please contact me if I can provide you with any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Koskinen', written over a horizontal line.

John A. Koskinen

January 19, 1996

### EXAMPLES OF HARM DURING THE PARTIAL GOVERNMENT SHUTDOWNS

The two partial shutdowns of the Federal Government totalled 27 days. **The overall cost of the November 14-19 and December 16 - January 5 shutdowns is estimated to be over \$1.4 billion** and created numerous backlogs in government services that will, in many cases, take months to overcome and will slow the delivery of future services.

The shutdowns had serious impacts on services including:

- **Approximately 170,000 veterans did not receive their December Montgomery GI Bill education benefits on time.** Due to the shutdown, there are an additional 87,000 initial education benefit claims pending and 69,200 ongoing certifications pending. Over 200,000 additional veterans disability compensation and pension claims were added to the backlog during shutdown, and each of the 350,000 existing claims in the system experienced a 30-day additional delay in adjudication time. Shutdown resulted in an additional pending 25,000 home loan claims and 8,000 life insurance actions. VA was unable to provide over 15,000 personal interviews and 81,000 telephone interviews to veterans, their survivors, or dependents. Currently, there are nearly 400,000 pieces of unopened mail that are over five days old.
- **Over 200,000 passport applications were not processed and are now backlogged** as a result of the shutdown.
- **Pay for over three-quarters-of-a-million Federal employees was delayed.** Most affected employees received only half pay after the December 15 shutdown and were facing the real possibility of no pay checks after that. This total includes both the 480,000 emergency workers who worked but could not be paid until Congress approved funds (such as VA doctors and nurses, Federal prison guards, FBI, DEA, and other law enforcement personnel), and the 280,000 non-emergency workers who were not allowed to work.
- Approximately **7 million National Park visits** were prevented.
- Over **2 million visits** to the Smithsonian museums, National Gallery of Art, National Zoo, Holocaust Museum, and the Kennedy Center were prevented.
- Approximately **5,200 small businesses were delayed in receiving SBA guaranteed financing.**
- During the shutdown, **small businesses lost the opportunity to bid on an estimated 1,036 contracts valued at \$244 million**, because SBA's Surety Bond guarantee program was not available. In addition, small businesses were unable to obtain final Surety Bond

guarantees for an estimated 306 contracts valued at \$55 million.

- **General assistance payments to about 53,000 Indian families and individuals were delayed** from the Bureau of Indian Affairs.
- **The unemployment offices in Kansas shut down for two days** and an estimated 1,000 to 1,300 newly unemployed people found the doors closed and were delayed in filing their initial claims for unemployment compensation.
- **About 1,300 workplace safety complaints** went unanswered and **3,500 investigations involving pension, health, and other employee benefit plans were suspended** by the Labor Department.
- There is now a **backlog of 250,000 cases for the Federal Parent Locator Service** which helps States locate parents who are delinquent in their child support payments.
- **Hundreds of Superfund toxic waste cleanups were shut down**, delaying cleanup of these sites and unnecessarily continuing exposure to dangerous chemicals for the citizens living near them.
- Approximately **\$60 million in environmental fines**, injunctive relief, and Superfund settlements against polluters were not collected, assessed, or negotiated.
- **Over 1,000 export licenses valued at more than \$2.2 billion** in U.S. exports were delayed because the Department of State and the Bureau of Export Administration were unable to process export licenses.
- Many transactions in the **telecommunications industry**, including the Turner/Time Warner and Disney/Capital Cities mergers, were held up partly because the Federal Communications Commission (FCC) review process was shut down. The Communications Act of 1934 requires FCC approval of spectrum license transfers which occur in most of these transactions to ensure protection of the public airwaves.
- **Over 30,000 FHA single-family home loans could not be insured** by the FHA -- either forcing FHA home-buyers to delay their purchase or requiring FHA lenders to temporarily carry the credit risk of such loans on their own books.
- **Federal research:** Public investment in science and engineering research yields high annual rates of return to society (well over 20 percent). During the shutdown about \$100-200 million of the National Science Foundation research grants were delayed, idling some 2,000 researchers that help support this important public investment. In addition, all panels scheduled to peer review research proposals were canceled delaying future research funding for these highest priority projects. Similar impacts were felt at many Federal R&D agencies, including NASA, NIH, Commerce, EPA, and others disrupting research on AIDS, cancer, the environment, and advanced technologies.
- **Important statistical releases that American businesses rely on were significantly delayed** by the shutdown -- most importantly the Bureau of Economic Analysis' Gross

Domestic Product and Corporate Profits for the third and fourth quarters of 1995, the October and November U.S. International Trade in Goods and Services, Personal Income and Outlays for October through December and Retail Sales for December and January. Also postponed were the scheduled releases on Import and Export Price Indexes, Durable Goods, Housing Starts, and Single Family Home Sales. There were also delays in releasing data on State and metropolitan employment and unemployment statistics, the producer price index, and the consumer price index. The shutdown will cause delays in future releases as well. The Department of Commerce estimates that its statistical releases will not be back on a regular schedule until May, 1996.

- **Some 5,000 requests for data from the National Oceanic and Atmospheric Administration's** archives went unfulfilled due to the shutdown of the National Climate Data Center. This impacted customers in commercial, legal, state and local, and research activities. As a result, state and local business planners were forced to delay commercial ventures requiring environmental information, and private value-added environmental firms could not get climate data to support their agricultural customers.
- **Preparation for the launch of the next NOAA Polar satellite** (which provides data for NOAA forecasts) was slowed down thereby increasing the likelihood of a gap in future polar orbiting weather satellite coverage. If another shutdown occurs, NOAA would halt further preparation activities. Failure to launch NOAA K (the next satellite in the polar series) to replace a failed satellite, would likely result in the degradation of weather forecasts by up to 15%.
- **The shutdown inconvenienced companies, universities, hospitals, and defense and law enforcement agencies which depend upon the National Institute of Standards and Technology's laboratory-based research and services.** For example, NIST provides in excess of 20,000 measurement samples and performs thousands of calibration tests each year for more than 3000 large and small companies. Specific examples of NIST services not provided include:
  - NIST had to delay verification of radiation dose standards through measurement quality assurance programs which are used annually on over 600,000 cancer patients and 26 million women who receive diagnostic mammograms.
  - NIST was unable to issue a new standard for lights and lamps (lumen) that was supposed to go into effect on January 1, 1996. The standard affects the U.S. lighting industry -- a multi-billion dollar/ year business (includes Sylvania, GE, Philips, etc.). The shutdown therefore resulted in delayed product delivery and lost sales.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503

December 22, 1995

DEPUTY DIRECTOR  
FOR MANAGEMENT

The Honorable John L. Mica  
Chairman, Subcommittee on Civil Service  
Committee on Government Reform and Oversight  
U.S. House of Representatives  
Washington, DC 20515-6143

Dear Chairman Mica,

I am in receipt of your letter of December 21, 1995 in which you indicate you have not received copies of revised agency shutdown plans. Please find enclosed a copy of a letter from me dated December 15, 1995 which transmitted a full set of the revised agency shutdown plans to you. Also enclosed is additional information we have received since then. You also requested copies of any additional guidance forwarded to agencies by my office. Please find enclosed a copy of a letter from me dated December 19, 1995 which previously transmitted a set of such materials to you. In addition, please be aware that a similar set of such materials was faxed to Edward J. Lynch of your staff several days ago. Enclosed is additional guidance sent since my earlier letter to you.

These materials should address the first three information requests in your December 21 letter. I would refer you to OPM or individual agencies for the fourth item, "a tabulation of annual leave reports from all agencies for the month of December of each of the past five years," as OMB does not collect such information.

Finally, you requested a briefing for the Subcommittee on Wednesday, December 27 at 2:30 p.m. I understand from a telephone conversation with Edward J. Lynch that was relayed to me that this would be a briefing of Subcommittee staff. Unfortunately, I will be unable to brief your staff on December 27. If parts of the Federal government continue to be shutdown next week due to Congress's failure to pass a Continuing Resolution, I will be working on shutdown related matters. Hopefully, the government will be reopened by that time and, in that event, I will be out of town on a long planned family vacation. Of course, I look forward to meeting with Members of the Subcommittee at a more appropriate time.

I hope that the enclosed information sent to you previously with the additional information provided fully addresses your questions and concerns. Please contact me if you have additional questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Koskinen". The signature is fluid and cursive, with a large initial "J".

John A. Koskinen

11/18/95  
13.46.46  
(MAX-SHUTPGM4)  
OFFICE OF MANAGEMENT AND BUDGET  
AGENCY SHUTDOWN PLANS, ESTIMATES AS OF NOVEMBER 15

Agency	Employees Excepted from Furlough	Employees To Be Furlough	Percent To Be At Work
AR Agriculture.....	11,077	37,817	65
AR Defense.....	12,622	25,677	35
AR Education.....	571,000	256,000	69
AR Energy.....	20,549	4,394	11
AR HHS.....	25,521	34,570	100
AR HUD.....	19,735	11,322	42
AR Justice.....	76,130	27,000	28
AR Labor.....	4,418	27,423	75
AR State.....	18,540	13,228	25
AR Transportation.....	41,489	8,086	70
AR Treasury.....	40,587	17,838	70
AR Veterans Affairs.....	200,392	122,886	25
AR Corps of Engineers.....	4,150	36,354	85
AR Environmental Protection Agency.....	686	21,733	16
AR General Services Administration.....	3,446	17,716	4
AR NASA.....	1,573	13,254	21
AR Office of Personnel Management.....	2,098	19,774	7
AR Social Security Administration.....	4,780	2,094	23
AR American Battle Monuments Comm.....	26	61,415	7
AR Armed Forces Retirement Home.....	697	345	73
AR Arms Control and Disarmament Agency.....	44	256	18
AR Coast Guard.....	1,535	2,007	48
AR Commercial Expenses..... Army.....	35	2,003	23
AR Commission on Civil Rights.....	10	98	20
AR Commodity Futures Trading Comm.....	95	95	100
AR Consumer Product Safety Comm.....	24	521	4
AR Corporation for Nat/Comm Service.....	66	447	8
AR Crime Insurance Compensation Board.....	100	427	13
AR Equal Employment Opportunity Comm.....	105	100	100
AR Export-Import Bank.....	20	2,755	4
AR Farm Credit Administration.....	380	425	4
AR Federal Communications Commission.....	100	100	100
AR Federal Election Commission.....	14	2,171	4
AR Federal Labor Relations Authority.....	4	313	4
AR Federal Reserve Bank.....	23	106	12
AR Federal Reserve System.....	2	287	1
AR Federal Trade Commission.....	979	100	100
AR FDIC.....	10,793	100	100
AR FEMA.....	384	4,086	9
AR Intel comm management account.....	14	227	6
AR International Trade Commission.....	10	420	0
AR Interstate Commerce Commission.....	2	420	0
AR Merit Systems Protection Board.....	3	267	1
AR National Archives and Records Admin.....	32	2,431	1
AR National Credit Union Administration.....	905	100	100

2/02/96  
10:59:16  
(MAX-SHTDEC05)

OFFICE OF MANAGEMENT AND BUDGET  
STATUS OF AGENCY SHUTDOWN PLANS

PAGE 1

Agency	Employees On Furlough	Employees Excepted From Furlough
Agriculture (Forest Service Only).....	31,000	8,850
Commerce.....	22,501	15,314
Education.....	4,510	15,550
HHS.....	24,779	34,781
HUD.....	9,839	1,888
Interior.....	48,000	22,600
Justice.....	12,613	85,956
Labor.....	14,227	3,783
State.....	8,086	18,743
Veterans Affairs.....	32,582	203,203
Environmental Protection Agency.....	16,159	720
NASA.....	19,980	1,290
Small Business Administration.....	2,522	2,650
Social Security Administration.....	10,203	55,992
American Battle Monuments Comm.....	25	346
Armed Forces Retirement Home.....	234	17
Arms Control and Disarmament Agency.....	185	56
AID.....	1,985	1,552
Consumer Product Safety Comm.....	80	50
Commission on Civil Rights.....	95	19
Corporation for Natl/Comm Service.....	439	48
Equal Employment Opportunity Comm.....	427	66
Export-Import Bank.....	2,504	287
Federal Communications Commission.....	420	25
Federal Maritime Commission.....	2,331	146
Federal Mediation and Conciliation.....	500	5
Federal Trade Commission.....	287	2
FEMA.....	1,909	979
International Trade Commission.....	421	482
National Labor Relations Board.....	5	9
National Science Foundation.....	1,233	24
NEA.....	182	6
NEH.....	166	6
Office of USTR.....	116	50
OPIC.....	27	175
OSIP.....	851	9
Peace Corps.....	382	9
Religious and Public Affairs.....	529	329
Securities and Exchange Commission.....	1,003	2,846
Selective service System.....	180	1
Smithsonian Institution.....	4,765	779
US Holocaust Memorial Council.....	208	15
US Information Agency.....	2,274	5,261
Agencies/programs without enacted approp....	283,710	470,970

11/18/95  
13.46.46  
(MAX-SHUTPGH4)

OFFICE OF MANAGEMENT AND BUDGET  
AGENCY SHUTDOWN PLANS, ESTIMATES AS OF NOVEMBER 15

	Agency	Employees Excepted from Furlough	Employees To Be Furlough	Percent To Be At Work
	National Labor Relations Board.....	5	2,012	0
	National Science Foundation.....	25	1,232	100
EW	Nuclear Regulatory Commission.....	3,216	232	3
	NEA.....	6	240	2
	NEH.....	5	300	90
TR	NTSB.....	300	175	1
	Office of Administration.....	22	100	17
TV	Office of OSTP.....	28	100	40
	OMB.....	221	336	100
	OPIC.....	175		100
TR	Panama Canal Commission.....	8,772	851	31
	Peace Corps.....	382	998	100
	Railroad Retirement Board.....	3		100
	SEC.....	3,931	106	10
	RTC Inspector General.....	12		100
	Securities and Exchange Commission.....	2,846	180	1
	Selective Service System.....	1	4,765	14
	Smithsonian Institution.....	779	196	100
EW	Tennessee Valley Authority.....	16,605	2,270	70
	US Department of Agriculture.....	5,265	312	22
	US Information Agency.....	88		59
TV	White House Office.....	1,179,960	825,745	50
	Total, all agencies.....	224,348	220,709	61
	Agencies with enacted or soon-to-be enacted appropriations	955,612	605,036	
	Total, all agencies less those with enacted or soon-to-be enacted appropriations			

WILLIAM F. CLINGER, JR., PENNSYLVANIA

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ONE HUNDRED FOURTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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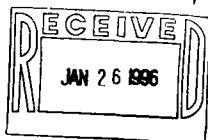
INDEPENDENT

 MAJORITY—(200) 225-6074  
 MINORITY—(200) 225-6061

January 18, 1996

The Honorable John A. Koskinen  
 Deputy Director for Management  
 Office of Management and Budget  
 Old Executive Office Building  
 Washington, D.C. 20503

Dear Mr. Koskinen:



I am writing to request that you provide additional information that will complete the Civil Service Subcommittee's record related to the hearing on Wednesday, December 6, 1995, on "The Government Shutdown: What's Essential?" We appreciate the additional information that you provided in December, but we believe it necessary to supplement our record with additional matters, including some related to the shutdown that began on December 16, 1995. Questions in this letter will be in addition to requests that we will make of the individual agencies that also testified during that hearing.

1. Was OMB's role in planning, implementing, and overseeing the shutdown modified in any way between the November and December shutdowns?
2. What, if any, changes in agency operating plans did OMB approve prior to the shutdown that began December 16, 1995? The Subcommittee is particularly interested in any information developed during the December 6, 1995, hearing that was considered in modifying subsequent shutdown plans.
3. What steps has OMB taken to ensure that executive agencies adhered to its guidance? Were any modifications of these procedures made during the second shutdown? If so, please describe those changes.
4. Please provide the Subcommittee with an account of overtime and other premium pay received by furloughed federal employees as a result of the two shutdowns. Please include an estimate of the savings that would be realized by eliminating premium pay for periods when work is not performed.

5. What steps did OMB take to interrupt its own operations during the December shutdown? Please provide a description of the numbers of employees furloughed and the functions they performed as well as a description of persons retained and their functions. Please describe the source of any funding for continuing functions if the funding is other than appropriations.

6. During the December 6 hearing, you spoke disparagingly of the possibility of an extended shutdown. What changes in OMB operations were occasioned by the length of the December-January shutdown? Did OMB provide any revised guidance to other agencies to ease adjustments from short-term to long-term interruptions of routine operations?

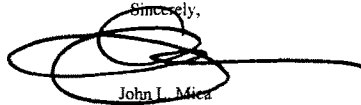
7. Please estimate the total costs, to your agency and the government, that you attribute to the November 14 - 20 and the December - January interruptions of operations. Your submission for the November shutdown should make any necessary revisions to the estimate included in your December 6 testimony. Please describe any unusual costs imposed on agencies or any other unanticipated consequences of this interruption of routine operations. Please provide, too, an estimate of any offsetting savings associated with this interruption of routine operations.

8. Please provide the Subcommittee with an estimate of the total number of federal employees furloughed at each agency as a result of this interruption during both shutdowns. How many employees were considered exempt from furlough requirements? Please identify sources of funding for any employees considered exempt from furlough requirements.

9. Testimony provided to the Subcommittee's December 6 hearing included several references to backlogs of work that would accumulate during any shutdown. After the December-January shutdown, the Office of Personnel Management issued guidance to agencies regarding the management of accumulated annual leave resulting from the shutdowns. What procedures will your office use to ensure that agencies accomplish the work accumulated during furlough periods while accommodating employees' use of additional annual leave?

Thank you for your assistance in developing this information. We would appreciate a response by February 2, 1996. Please direct your response to the Subcommittee office, Room B371C Rayburn House Office Building.

Sincerely,



John L. Mien  
Chairman

Subcommittee on Civil Service



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
THE DEPUTY SECRETARY  
WASHINGTON, D.C. 20410-0050

February 2, 1996

The Honorable John L. Mica  
Chairman, Subcommittee on the Civil Service  
Committee on Government Reform and Oversight  
2157 Rayburn House Office Building  
Washington, D. C. 20515-6143

Dear Representative Mica:

Please find attached my responses to the questions you posed in your January 18 letter. If I can be of any further assistance to you or your committee please do not hesitate to contact me.

Thank you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Dwight Robinson", is written over the typed name and title. The signature is stylized with a large, sweeping initial "D" and a long, horizontal stroke extending to the right.

Dwight Robinson  
Deputy Secretary

Enclosures

**Question 1**      Please describe any changes in planning, procedures, and operations that your Department made between the November and December-January shutdowns. Please submit any revisions and/or supplements to your department's shutdown plans. In light of the substantial change between shutdown numbers reported in the second shutdown, what changes are contemplated regarding the Department's definition of emergency functions? Please provide the new legal reasoning that supports this change from previous shutdown plans.

For the purposes of the initial November shutdown planning, the Department had assumed that this shutdown would be of relatively short duration, as all previous shutdowns had been. A short shutdown in the middle of the month generally means a delay in payments for public housing and community development activities, but does not usually grievously threaten life and property. Accordingly, we planned to keep on board only a minimum staff to protect life and property. As the duration of the shutdown grew, however, it was apparent that as we approached the end of the month, since HUD deals with physical property and life and death situations, to continue the basic emergency functions, HUD would require a greater staff presence.

Additional staff would be needed to open the automated payments system for assisted housing; to provide for emergency repairs and maintenance on HUD-held properties; to renew and extend contracts to protect properties; and to arrange for closing on multifamily FHA insured loans and projects with legally binding commitments.

(A copy of the revised plan for the December-January shutdown is attached as B.)

The legal reasoning for the revision to the plan is as stated above: for a very few days in the middle of the month, most Departmental operations can be briefly suspended without creating imminent threat to life and property; after a few days, however, financial systems that were paused must resume, and Federal employees must be on the job in order to protect life and property.

**Question 2.**      Please submit the numbers of persons furloughed in each agency during the two shutdowns. For each function which was subject to furlough during the first shutdown, but exempted from furlough during the second shutdown, please provide policy and legal reasons supporting the decision to change the status of the functions.

During the first shutdown, a Departmental total of 11,231 employees were furloughed. During the second shutdown, 9,839 employees were furloughed.

Policy and legal reasons for each activity originally suspended, but resumed over the longer term shutdown, are provided in the revised shutdown plan sent to OMB on December 13, 1995, and enclosed in response to Question 1.

**Question 3.** Please provide a report, by agency and by category, of all amounts and forms of premium pay (overtime, night differential, etc.) that was paid to agency employees who were furloughed during each shutdown.

Our reports are done on a bi-weekly basis. The first shutdown was three days out of a pay period. It would not be possible to isolate the data pertaining to those days.

Data for the second shutdown shows that we paid \$4,768.35 in overtime pay for general HUD workforce employees and \$85,018.00 in overtime pay for the Office of the Inspector General. In addition, we paid a small portion of \$326.40 in Sunday and night differential.

**Question 4.** Please provide a report, by agency, of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and amounts paid to agency employees. Please describe any costs that will be incurred by your Department as a result of efforts to collect reimbursement of these payments after routine pay is restored.

According to our records 778 employees applied for unemployment compensation based on the November 1995 shutdown. Based on the December-January shutdown, 2,603 employees have applied.

We have no way of knowing any amounts paid to employees until we receive reports from the States (not before February 1996).

The costs of collecting reimbursements of unemployment benefits are, of course, an unknown. The Department of Labor in a memorandum dated January 24, 1996 indicates the information agencies need to provide to the States in order for them to identify employees that have been overpaid. Computer program specifications will be developed in order

to report this information to each State. Additional administrative costs will be incurred, but the cost associated with providing this information is unknown at this time.

The memorandum further states that under some States' laws, the burden of initiating the collection of the overpayment from the employee rests with the agency. In those instances, we will incur additional personnel and administrative costs to perform this service, report back to the various States, and follow up on future quarterly chargeback listings to ensure that our account has been adjusted to reflect the amount(s) collected.

Until we receive our quarterly listings from the 53 State agencies, verify the charges that are unrelated to the November and the December - January furloughs, we will not be able to determine the volume and/or additional personnel services costs.

**Question 5.** Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.

Total costs to the Department for salaries and benefits of employees during the November shutdown were \$10,211,000. During the December-January shutdown, those costs were \$32,116,000, for a total of \$42,327,000.

Unusual costs incurred during interrupted operations, and unanticipated consequences of interruptions of operations, include costs of cancelling training courses, travel expenses incurred when employees were recalled to their duty stations to be furloughed and printing costs incurred to print furlough notices. No estimated savings were identified for either shutdown.

**Question 6.** Please indicate the shutdown's impact on programs funded through trust funds, fees, carry over funds, or other revenues not tied to annual appropriations. Please describe any changes made in implementing these programs during the December-January shutdown.

The Office of Federal Housing Enterprise Oversight (OFHEO), within the Department, is funded through assessments of the enterprises it regulates, rather than through appropriations. OFHEO operations were not affected by the shutdowns and none of its staff was furloughed.

**Question 7. Please provide staffing levels for all public affairs offices in the Department during the shutdown.**

During the November shutdown the staffing level for the Office of Public Affairs was 4.

During the December/January shutdown, the Office of Public Affairs staffing level was 4 staff

**Question 8. Please provide a report of the number and furlough status of political appointees, noncareer Senior Executive Service personnel, and Schedule C appointees, by agency during each shutdown.**

<u>November</u>	<u>Excepted</u>	<u>Furloughed</u>
Noncareer SES personnel	18	2
Limited SES personnel	3	
Schedule C appointee	32	52
<u>December/January</u>		
Noncareer SES personnel	17	2
Schedule C appointee	31	45

**Question 9. Please provide estimates of the numbers of employees and the amount of accrued annual leave that will be restored by your Department as a result of employees required to work during the second shutdown. Please describe any other effects that the second shutdown will have on the administration of employees' leave programs.**

Based on revised guidance by the Office of Personnel Management (OPM), dated January 17, 1996, agencies were instructed to restore forfeited annual leave to each employee who was not permitted, because of the lapse in

appropriations, to use annual leave that had been scheduled in advance in writing according to OPM regulations. This includes both excepted and furloughed employees. Based on a preliminary internal report, there is a potential for restoration of 182,189.50 hours of annual leave forfeited by 4,132 employees. Procedures have been established to request verification of the forfeited hours and a certification by the employee's supervisor that the leave was scheduled in writing by November 25, 1995 as required by OPM regulations.

In addition, the shutdown greatly increased the number of requests for guidance, as well as the workload required to actually correct the leave records of employees. Also, a number of employees approved as leave recipients under the Voluntary Leave Transfer Program did not receive donations of unscheduled leave subject to forfeiture, which otherwise would have been donated.

**Question 10      Several functions identified as subject to furlough are listed in agency plans as funded through multiple year appropriations. How was this factor considered in your planning?**

For HUD, most employees salaries are paid from Salaries and Expense account. Program funding of departmental employees is paid from a variety of other accounts. The decision to furlough employees was based on the lack of funding in the departmental Salaries and Expenses account. The only employees for whom obligations were incurred to pay salaries were those needed on account of imminent threats to life or property, the conduct of the shutdown, or in the case of employees of the Office of Federal Housing Enterprise Oversight, those not paid from the departmental Salaries and Expense account.

**FH&EO**

Staff in the Fair Housing Initiatives Program Division were retained to approve payments to current recipients of Fair Housing Initiatives Program (FHIP) funds (from the FY 93, FY 94 and FY 95 competitions) because the organizations funded provide fair housing services to individuals who are subject to discrimination in housing which can involve threats to life or property of the individuals involved.

**Question 11.      During the November shutdown, HUD made statements that approximately 2,500 mortgages would not be processed each day under the FHA single family mortgage insurance program. Yet, HUD, in its September 7, 1995 shutdown contingency document, the Department mentions on page 2, in part, that certain exceptions include:**

"activities essential to the preservation of the essential elements of the money and banking system of the United States."

- a. In your opinion, is the FHA Single Family program (Mutual Mortgage Insurance Fund) essential to the money and banking system of the United States in that banks and mortgage brokers depend on an efficient and continual system to operate and process mortgage applications?

Yes. However, FHA delegates to lenders the authority to endorse loans and perform other insurance functions, with the assistance of certain FHA systems and support. After the loan closes, FHA reviews the application and issues the mortgage insurance certificate (MIC) that a lender needs to issue mortgage-backed securities and access new capital. FHA does not review most insurance applications before the loan closes. Thus, some FHA lending could continue despite the shutdown. The anticipated duration of the shutdown determined whether it was essential for FHA to perform certain functions to avoid an adverse impact on the money and banking system.

- b. If the answer is yes: Why did the Department, if it deems the Mutual Mortgage Insurance Fund as essential, shutdown and stop processing mortgage insurance applications?

The November shutdown was not anticipated to last a long time. HUD could not argue that the ability of FHA to process mortgage insurance applications for a few days was essential to the money and banking system. Thus, FHA shut down its systems and did not issue MICs. However, when the government shut down for a second time in December and the prospect of reopening was less certain, we kept certain systems open to make it easier for lenders to close loans, assuming that FHA would provide insurance (MICs) when it reopened. This created difficulties in many cases, but did not threaten the money and banking system. If the second shutdown had lasted even longer, we would have had to consider whether the operation of the money and banking system required FHA to begin issuing MICs again.

- c. If the answer is no: What does your Department consider essential to the money and banking system, notwithstanding GNMA payments, etc.?

See above.

**Question 12. What FHA single family mortgage insurance activities were affected by the shutdown?**

See above.

**Question 13. "Today's Focus at HUD, Thursday, November 30, 1995" states that FHA will process single family mortgages during the November 14-19 shutdown. What precipitated that change in policy from the one published in the November 14 HUD Focus statement?**

The question misinterprets the November 14 and November 30 FOCUS statements. The later does not represent a change in policy.

During the November 14-19 shutdown, FHA systems were down and it did not process insurance applications. Some lenders did, however, make some FHA loans. After FHA reopened, it took steps -- announced on the November 30 FOCUS -- to be flexible if a lender varied from standard procedures because HUD was shut down. For example, lenders are supposed to get a case number from FHA before beginning to process a loan application. Since FHA's systems were down during the first shutdown, lenders could not obtain the case number. The November 30 FOCUS statement said that FHA would accept for insurance loans for which the lender had not obtained the case number in advance.

**Question 14. When did the secretary agree to process those applications, supposedly delayed during the shutdown?**

There was never any suggestion that FHA would not process backlogged insurance applications when it reopened. When the furlough ended, FHA immediately began processing the backlogged applications for insurance.

**Question 15. Were there any indications before November 30th that the Secretary would allow FHA processing of these types of loans, particularly during the shutdown?**

FHA never processed applications for insurance during the shutdown. Nor did it suggest that it would not process applications for insurance after it reopened.

**Question 16. If there is another shutdown, what will be the procedure for FHA mortgages?**

In the January 6, 1996 continuing resolution, H.R. 1358, Congress included language that authorizes all FHA single family insurance activities through September 30, 1996, regardless of whether the government is shut down again or not.

**Question 17. How many FHA single family employees were exempted from furlough in each shutdown? On what basis were these decisions made? What changes could we anticipate if another shutdown were to occur?**

During the first furlough, the excepted single family staff were:

Headquarters	3
Field	0
Total	3

During the second furlough, the excepted single family staff were:

First week - 12/18

Headquarters	3
Field	71
Total	74

Second week - 12/26

Headquarters	8
Field	71
Total	79

Third week - 1/2

Headquarters	8
Field	116
Total	124

Decisions were made to except those staff necessary to carry out the functions deemed to be essential to protecting property and the banking and money system. Thus, there was one person in almost every single family field office. Single family systems and activities necessary to protect property were also supported by excepted employees from the Office of the FHA Comptroller and Office of Information Policies and Systems.

As noted in question 16 above, all FHA single family employees will be authorized to work, notwithstanding any further government shutdowns, under the terms of the Continuing Resolution passed on January 6th.

Question 18      The Department issued a statement on the first day of the shutdown that homeless providers and AIDS patients needing housing assistance would suffer, or to quote:

-related to AIDS sufferers

"If the Government shut down, their funds will be delayed and homeless AIDS sufferers will be needlessly condemned to the streets."

-related to Homeless persons

"Homeless persons will suffer even more than they do now, as many providers will not be able to secure funds previously appropriated for the shelter and services they deliver to America's most needy people."

- a. HUD's September 7th shut down guidelines exempt programs that affect safety and health. Are these two programs [homelessness and HOPWA] under the category of "safety and health"?
- b. If yes: Why did the Department make statements and alarm the public that these programs would not continue?
- c. If no, Why not?

18a. Yes. The plan which was submitted to the Office of Management and Budget on September 7, 1995, identifies these program activities as ones that could be continued in the event of a shutdown. On page 13, the plan states, "Activities related to the administration of ongoing McKinney homeless assistance and HOPWA programs, since failure to do so would imminently threaten the safety of human life by making housing and services unavailable to particularly vulnerable populations."

18b. During the November shutdown, HUD's Line of Credit Control System (LOCCS), through which grantees draw funds, was not operational. Therefore, grant awards that had been made prior to that point in time for which the funds were "in the system," could not be accessed by providers.

In planning for a second shutdown, the Department broadened the scope of excepted activities and, from the start, identified a portion of Homeless and HOPWA staff as excepted personnel.

**Question 19      How many homeless persons and AIDS sufferers were adversely affected, or "put on the streets" as the Secretary noted, by each government shut down?**

The two shut downs reduced opportunities for State and local governments and for nonprofit organizations that provide assistance to take the normal steps in planning, opening and operating projects that provide housing assistance and related services for persons who are homeless or persons living with HIV/AIDS and their families.

During the first furlough, because of it's duration, we estimate that minimal effect was felt by grantees and the homeless persons they serve. During the second furlough, however, grant agreements for 66 projects that were ready for approval were held up until after the shutdown, delaying implementation of projects serving several thousand persons. These delayed projects would have provided transitional housing and services, as well as permanent housing for the mentally ill and other homeless individuals and families at the beginning of the winter season who were already on the streets or in emergency shelters.

In addition, there were 370 other projects delayed which, while not ready for execution of the grant agreement, were being assisted by HUD Field Offices in the preparation of necessary legal documents prior to agreement execution. These projects are designed to serve well over 100,000 homeless persons.

In the HOPWA program, some commitments of FY 1995 funds were delayed due to the furlough. In 1995, \$153.9 million was made available to States and cities by formula allocations and \$17.1 million was made available by competitive award. HUD offices were not able to approve programs and authorize access to program funds for 16 of the 21 competitively selected grants, including identification and training of project staff who will access funds and account for the use of such funds. The estimated number of clients to be served by these projects was 7,953 persons with housing assistance and an additional 4,308 with related services. During the interim between these interruptions, HUD staff were able to approve five grant agreements and one project expended funds. Formula programs in all 66 eligible jurisdictions were required to accommodate a rescission of part of the FY 1995 program funds, including holding additional public hearings or consultations, and resubmitting revised plans. No action was taken on formula revisions during the furlough periods.

**Question 21** Please identify the 21 local HOPWA [Homeless People With AIDS] groups, cited in HUD's November 14th Focus, that did not receive their funds?

These competitively-awarded projects were pending technical submission reviews, financial procedure authorizations and other actions during the first furlough and 16 were pending during the second furlough.

**Table 1. 1995 HOPWA Competitive Grants.**

Grant Recipient	Project Location	Award Amount
AIDS Task Force of Alabama, Inc.	Birmingham, Alabama	\$ 756,992
Alaska Housing Finance Corp.	Fairbanks & Juneau, Alaska	716,166 LT
Marin County Community Development Agency	San Francisco metro area	1,100,000
State of Connecticut Dept. of Social Services	State-wide, Connecticut	998,648
Cornerstone Services, Inc.	Joliet, Illinois	465,991
Travelers & Immigrants Aid of Chicago	Chicago, Illinois	1,030,000
UNITY for the Homeless	New Orleans, Louisiana	1,099,230
City of Baltimore Department of Housing and Community Development	Baltimore, Maryland	1,076,718
State of Maryland, Department of Health and Mental Hygiene	Eastern Shore & Western Maryland	1,000,000 LT
AIDS Housing Corporation	Boston, Massachusetts	990,534

Hospice of Southeastern Michigan	Detroit metro area, Michigan	572,932
State of Missouri, Department of Health	Areas outside of St. Louis and Kansas City, Missouri	888,065 LT
Community Counseling & Mediation	Brooklyn, New York	66,950
Episcopal Social Services of New York, Episcopal Action	Harlem neighborhood of New York City, NY	1,099,999
Greyston Foundation, Inc.	Yonkers, New York	1,100,000
Southside Community Mission	Brooklyn, New York	975,572
Asociación de Puertorriqueños en Marcha	Philadelphia, Pennsylvania	1,030,000
State of Rhode Island, Housing and Mortgage Finance Corporation	Providence, Rhode Island	943,440 LT
State of Vermont, Housing and Conservation Board	State-wide, Vermont	719,950 LT
AIDS Housing of Washington (2 projects)	National & Seattle area projects, Washington	1,042,770
<b>TOTAL HOPWA 1995 Awards</b>	<b>21 Grants</b>	<b>17,673,957</b>

LT denotes Long-term projects; others are Special Projects of National Significance

**Question 22**      **What is the spend-out rate for Homeless programs and HOPWA funds? For how long can these programs continue to operate on carry-over funding?**

Both the Homeless and HOPWA programs spend out (are drawn down by grantees) over 5-plus years, primarily due to the nature of the projects that are undertaken -- building of shelters and other types of housing, provision of services over a period of time, continuing rental assistance, etc.

Homeless competitive program funds, awarded since 1987, have assisted more than 2,000 projects at an average annual rate of \$71.6 million. These figures do not incorporate the recent 1995 awards. The Supportive Housing Program, the largest of the homeless programs, as well as the Shelter Plus Care program have a very limited amount of carry-over funds. The Section 8 Moderate Rehabilitation Single Room Occupancy Program, which is for a ten year period, has some carry over funding.

Over the four fiscal years 1992-1995, the HOPWA program allocated funds by formula to 34, 43, 54 and 66 jurisdictions, respectively, in each year, and provided for an additional 62 competitively-selected projects. During the most recent 3-month period, expenditures from all funding years was about \$8.9 million per month, for an annual equivalent of \$106.9 million. These amounts have increased by about nine percent over amounts spent in the last two quarters.

**Potential Funding Gaps.** Many grantees exceed this average use rate and will complete full use of funding before the end of their 3-year use period. For example, the State of Tennessee has used 100 percent of its FY 1995 funds; with a small residual amount from prior years (about 10 percent), the State will soon rely exclusively on FY 1996 appropriations, if approved, to maintain programs.

**Question 23**      **During the shutdown, what efforts were made by HUD to continue to make contract payments to section 8 project-based owners?**

Section 8 payments to project-based project owners were made during each shutdown by the LOCCS system after the input vouchers were processed by excepted HUD staff in the Field Accounting Divisions (FADs). These payments were contract obligations incurred prior to the shutdown.

**Were there payments made to section 8 tenant-based holders?**

Yes, during the government shutdown the Department's financial systems were up and operating as HUD continued to ensure that PHAs with Section 8 tenant-based holders received payments and that no tenants lost housing during this period.

**Question 24      What is the basic function to provide processing payments to section 8 holders?   b. How many employees are necessary to operate the computers that process the Section 8 payments?**

The basic function to process payments to Section 8 holders begins with entry of a twelve month payment schedule into the Department's accounting system by a financial analyst in the field, which must be approved and processed by a supervisor before payments can be generated by the accounting system. Once the approved payment schedule is entered into the system, spendout will occur against available funds based on the schedule. During the shutdown, if the field offices had entered and approved schedules for their respective PHAs into the Department's accounting system, the Section 8 payments continued to flow to the applicable PHAs. However, some PHAs did not have approved payments already scheduled in the accounting system prior to the shutdown, and those payments were reviewed and approved by excepted employees in HUD headquarters.

Field Office Financial Analysts were called back to work during the shutdown in order to assess which PHAs would experience a funding shortfall by February 1 in the event funds did not become immediately available under a new Continuing Resolution. Financial Analysts also calculated the renewal funding requirements for January expirations so that funds could be immediately assigned as soon as the shutdown ended.

**b:**    Approximately 119 employees were necessary to operate the computers that process the Section 8 payments. This number is calculated by estimating that two employees (one financial analyst and one supervisor) would be needed per 59 Field Offices (i.e. 52 Field Offices, 6 Native American Offices, and the Beaumont Office.) One employee was also be needed in headquarters.

**Question 25      In most cases the Section 8 payments are made from previously appropriated funds. How are these previous appropriated funds affected by the shut down for FY 96?**

Not affected by the shutdown. We are continuing to make payments to the housing authorities.

**Question 26.** During your testimony before the Subcommittee, you cited several examples of backlogs that would accumulate for each day of a potential shutdown. Please provide the Subcommittee with an inventory of the workload backlogs that your Department associates with the shutdowns. In light of OPM's January 17, 1996 guidance to restore all annual leave, please provide the Subcommittee with your management plan for reconciling the accumulated leave and the workload backlogs that resulted from the furlough periods.

**FHA**

Complete inventory is not possible. Addition examples of Office of Housing backlogs include:

- Reserves for Replacement,
- Rent Increases
- Physical Inspections
- Financial Statement Reviews
- Endorsements
- TPA's
- Closings
- Flex Subsidy Releases
- Section 8 Extensions/Amendments
- Vouchers
- Production processing including; Preapps, Inspections,
- Appraisals, Cost, Mortgage Credit.

Unopened mail received by the **Lender Approval and Recertification Division** during 2nd furlough:

Initial applications .....88  
 Branch applications .....149  
 Additional sponsor applications ....589  
 Financial statements for review ....322  
 Misc. correspondence .....119

**Significant backlogs from the Office of Mortgage Insurance Accounting and Servicing**

	<u>@12/15</u>	<u>@1/12</u>
-Mortgage insurance applications		
pending endorsements	100,000	200,000
-Exceptions	1,250	6,250
-Record changes	5,900	
-Terminations	2,200	18,200
-Premium Refunds	2,933	10,500
-Claims	7,000	17,000
-Vendor payments (properties)	0	6,000

Significant Office of Housing **procurements** delayed three-to-four weeks include:

- SF auctioneer services (for property disposition)
- Computer support for Single Family Asset Management System
- Advanced micro-simulation actuarial model
- Technical assistance for Multifamily SWAT teams
- Demonstration contracts for Single Family property disposition activities in Maryland, California, and Louisiana
- HUD Homes hotline services
- Asset sales (notes)

Finally, we attach a workload information summary of the number of single family cases logged in but not endorsed as of January 18, 1996 by single family field office. The actual backlog is higher because some cases have been received by the office but not yet logged in. (Attachment A.)

#### **FAIR HOUSING AND EQUAL OPPORTUNITY**

Based on the average number of fair housing cases opened per week during the previous fiscal year and our long term average for case closure we estimate that 464 fair housing complaints would have been filed during the shutdown and 450 cases closed. These are National figures and include both HUD and FHAP cases. Although the state and local FHAP agencies were still open, HUD was unable to refer cases or process those cases the FHAP's investigated. In addition, approximately 250 claims or inquiries concerning discrimination would have been submitted that would have received service from HUD but not result in the filing of a fair housing complaint.

#### **ADMINISTRATION**

Because of the shutdowns, incoming mail accumulated and required considerable time to sort through. This contributed to delays in processing actions that were in the pipeline, extensions of vacancy announcements, rescheduling of merit staffing panels, delays in issuing selection certificates and in rating and ranking job applications. Decisions regarding proposals to remove and discipline employees were also delayed. Delays occurred in initiating 47 reimbursable personnel security investigations and in closing 24 others.

Examples of other impacts include a processing and counselling backlog to accommodate retirements and separations, many of which occurred during the shutdown.

Optional retirement/buyout	74 employees
Early retirement/buyout	38 employees
Resignation/buyout	5 employees
Declined/buyout	31 employees
Extended/buyout	2 employees
Optional retirement	9 employees
Early retirement	6 employees
Disability retirement	6 employees

The December - January shutdown caused several problems, including incorrect pay checks. Since pay was issued in three installments, there was insufficient pay after required deductions to cover individual obligations. Regular deductions for financial allotments, court-ordered garnishments for child support/alimony and commercial debts were either not processed or significantly reduced.

Pay problems caused a considerable increase in workload--countless telephone inquiries from employees respondents, and attorneys, etc., concerning missing deductions; requests for pay reconciliations, and coordination with the Department's payroll agent in New Orleans, Louisiana. Processing delays occurred in 24 court orders covering actions such as garnishments, tax levies, child support, and alimony.

Other shutdown impacts included timekeeping. Since employees were paid manually by NFC with a supplemental pay check and paid automatically for one week based upon the employee's work schedule, corrected timecards had to be prepared for every employee. Employees who should not have been paid because they were in a non-pay status, were paid; collection procedures must now be implemented. Due to the overload of submitting corrected pay data, all actions had to be resubmitted due to failures in the automated systems. Personnel Assistants have had to literally spend days explaining the errors in pay checks created by salary payments generated during the furlough.

**PUBLIC AFFAIRS**

\*Editing of the Annual Report was delayed

\*Invoices for services provided by vendors prior to the shutdowns were not processed in a timely manner as required by the prompt payment act.

**PUBLIC AND INDIAN HOUSING**

The Office of Public and Indian Housing (PIH) accumulated a backlog during the government furlough that include the inability to do following:

- Assess 50 very large public housing developments and develop a guide for PHAs to use in assessing the future viability of their stock.
- Review by field office staff of the formula characteristics reports data for the CGP Housing Agencies in preparation for running the FY 1996 CGP formula. There are approximately 904 PHAs, with well over 21,000 data records, involving all 52 field offices and headquarters staff.
- Review demolition\disposition applications in headquarters.
- Progress in the computer matching systems development effort to detect fraud by tenants in reporting their incomes for purpose of determining their rent.
- Provide technical assistance to Native American tribes, housing authorities, or resident organizations.
- Complete processing of regulatory reductions.
- Complete PHMAP assessments for PHAs with FYE 6/30/95. This meant that these PHAs were not notified of possible incentives they were eligible for which may have impacted on other PIH program areas and grant applications.

COMMUNITY PLANNING AND DEVELOPMENT/HOMELESS

During the second furlough, work on 66 grant agreements for Homeless Assistance projects were delayed and were not approved until after the shutdown ended. Accompanying these grant agreements, in some cases, were security and financial documents which would allow for the assignment and disbursement/draw down of homeless assistance funds. These delays forced recipients to explore other areas of funding, incurring undue hardships or actually closing down their facilities.

Additionally, technical assistance was not provided to 370 additional projects which were moving toward grant agreement execution, thereby delaying both the execution of the grant agreements and the implementation of these projects.

In the HOPWA program, HUD staff were not able to approve programs and authorize access to program funds for 16 of the 21 competitively selected grants, including identification and training of project staff who will access funds and account for the use of such funds.

WORKLOAD INFORMATION  
SINGLE FAMILY ENDORSEMENTS  
NUMBER OF CASES LOGGED IN (RECEIVED) - NOT ENDORSED  
AS OF 1/18/96

0102	BANGOR	16
0106	BOSTON	2
0110	BURLINGTON	1
0126	HARTFORD	391
0136	MANCHESTER	0
0143	PROVIDENCE	180
0202	ALBANY	33
0206	BUFFALO	0
0216	CAMDEN	66
0236	NEW YORK	86
0239	NEWARK	111
0306	BALTIMORE	408
0315	CHARLESTON	25
0326	PHILADELPHIA	371
0328	PITTSBURGH	66
0336	RICHMOND	260
0339	WASHINGTON D. C.	1,046
0344	WILMINGTON	31
0406	ATLANTA	42
0409	BIRMINGHAM	306
0414	CORAL GABLES	954
0416	COLUMBIA	45
0419	GREENSBORO	795
0426	JACKSON	177
0429	JACKSONVILLE	395
0436	LOUISVILLE	17
0437	KNOXVILLE	12
0440	MEMPHIS	152
0443	NASHVILLE	22
0444	ORLANDO	677
0446	CARIBBEAN	503
0450	TAMPA	266
0506	CHICAGO	2,187
0510	CINCINNATI	1
0512	CLEVELAND	325
0516	COLUMBUS	366
0528	DETROIT	268
0533	GRAND RAPIDS	145
0536	INDIANAPOLIS	774
0539	MILWAUKEE	6
0544	FLINT	23
0546	MINNEAPOLIS ST. PAUL	223
0550	SPRINGFIELD	212
0602	ALBUQUERQUE	127
0616	DALLAS	158
0621	FORT WORTH	87
0624	HOUSTON	48
0637	LITTLE ROCK	442

0641	LUBBOCK	92
0648	NEW ORLEANS	120
0656	OKLAHOMA CITY	8
0659	SAN ANTONIO	163
0662	SHREVEPORT	21
0670	TULSA	35
0705	DES MOINES	236
0716	KANSAS CITY	288
0726	OMAHA	240
0736	ST. LOUIS	95
0740	TOPEKA	75
0805	CASPER	39
0806	DENVER	222
0815	FARGO	1
0820	HELENA	12
0830	SALT LAKE CITY	15
0835	SIOUX FALLS	2
0905	FRESNO	797
0908	HONOLULU	112
0916	LOS ANGELES	21
0920	PHOENIX	250
0925	RENO	0
0930	SACRAMENTO	425
0933	SAN DIEGO	2
0939	SAN FRANCISCO	327
0943	SANTA ANA	210
0944	LAS VEGAS	27
0945	TUCSON	183
1006	ANCHORAGE	46
1008	BOISE	0
1016	PORTLAND	263
1019	SEATTLE	63
1025	SPOKANE	24
NATIONAL TOTAL		17,262



Attachment B

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
THE DEPUTY SECRETARY  
WASHINGTON, D.C. 20410-0050

December 13, 1995

Mr. Alan B. Rhinesmith  
Deputy Associate Director  
Housing, Treasury and Finance Division  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Mr. Rhinesmith:

SUBJECT: Revised Contingency Plan for Agency Shutdown

This letter responds to OMB's Budget Data Request Number 96-21. It amends the detailed shutdown plan for the Department of Housing and Urban Development (HUD) submitted in September, and constitutes a revised shutdown plan in the event of an appropriations lapse after December 15, 1995. Our plan is based on the assumption that a shutdown of short duration can be managed relatively easily with a minimal staff. However, after a day or so without funding, the critical needs of HUD clients and beneficiaries require that more Departmental activities would necessarily resume, and more HUD employees would be required to perform them. Details of the proposed staffing levels in each instance are shown in the enclosure to this letter. To assure the protection of life and property in programs in the Department's jurisdiction, we propose the following:

For a **short-term shutdown**, we would retain on board essentially the same employees who were working on the last day (November 17, 1995) of the last shutdown (about 500). They would perform activities essential for the protection of life or property, activities funded by resources remaining available from funds other than annual appropriations, and activities necessary for the orderly shutdown of Departmental operations. Most of our data processing systems would be shut down, which would mean that most of the Department's financial activities would be suspended. All non-excepted employees would be furloughed.

After the first day of a shutdown, HUD beneficiaries would begin to feel the effects of the absence of funds, and life and property would be threatened. It would be necessary to open payments systems to provide funding to local housing authorities so that tenants would not suffer unduly from the cold weather and deferred maintenance.

If the funding lapse lasts more than a day, we would begin to implement our plan for a **longer-term shutdown**. Some activities that had been suspended would be resumed, to protect life or property, and some employees who had been furloughed would be brought back on board to perform these activities. Reopening the payments systems would require a large number of excepted employees, and our excepted staffing level for a longer-term shutdown would be about 1,900.

Over a longer term,

1. We would continue to disburse funds for public housing, with operating subsidies and modernization funds provided through local housing agencies providing housing and services to 1.4 million low-income households. For tenant-based rental assistance, we would propose to reopen the line-of-credit control system and to add an additional 200 employees to the "excepted" list to carry out these functions.

2. For Section 8 project-based rental assistance, we would reopen the Housing Assistance Payment System, to cover disbursements for over 1.9 million units of privately-owned rental housing. Over 4 million people live in these developments. For Housing, we would add 100 employees to the excepted list for these functions.

3. For the FHA Single-Family Mortgage Assignment Program, to help moderate-income homebuyers who are experiencing difficulty in paying their mortgages stay in their homes, we would add 70 employees to provide guidance to lenders concerning assignment of mortgages in case of default.

4. For FHA Multifamily Properties, to authorize the release of Federal funds to address emergencies (e.g. fires, vandalism, repairs) in insured and assisted properties, we would add an additional 150 multifamily Housing employees to the excepted list, and 60 administrative employees to the excepted list.

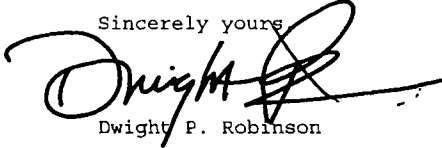
5. For Homeless Services, Services for Persons with HIV/AIDS and Funds to Cities and Communities, we would add an additional 120 employees to the excepted list. Reopening the data systems would provide for the delivery of essential housing and emergency services to at least 32,000 homeless persons; provide assistance to approximately 8,200 to 9,500 persons with HIV/AIDS each day, and provide access to funds for over 1,500 cities and counties which receive HOME and Community Development Block Grants.

6. If payments are to be resumed under the reopened systems noted above, an additional 215 employees of the Chief Financial Officer will be required to be excepted, and another 180 administration employees, most in ADP, will need to be added to the excepted list. Additional legal staff to provide litigation support and advice will also be needed.

In total, we are requesting exceptions for up to 1900 employees in the event of a longer-term shutdown.

Please let me know if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dwight P. Robinson", with a stylized flourish at the end.

Dwight P. Robinson

Enclosure

## ENCLOSURE

AGENCY: HOUSING AND URBAN DEVELOPMENT

## REVISED SHUTDOWN PLANS

Update on excepted/furloughed employees

Employees:	Short-term Shutdown Estimates		Longer-term Shutdown Estimates	
	<u>Excepted</u>	<u>Furloughed</u>	<u>Excepted</u>	<u>Furloughed</u>
Housing	28	5307	415	4920
PIH	24	1383	250	1157
GNMA	9	56	9	56
CPD	12	855	150	717
PD&R	5	105	5	105
FHEO	16	667	29	654
OGC	31	490	62	459
CFO	10	385	243	152
FDOS	130	207	132	205
Admin.	40	977	150	867
LBP	0	22	0	22
Dep't Mgmt.	34	67	34	67
Total, S&E	339	10,521	1,479	9,381
IG	191	426	191	299
WCF	25	284	150	159
OFHEO	68	0	68	0
Total HUD	623	11,231	1,888	9,839

December 13, 1995



United States  
**Office of  
Personnel Management**

Washington, D.C. 20415

**MAR 13 1996**

In Reply, Refer To:

Your Reference:

Honorable John L. Mica  
Chairman  
Subcommittee on Civil Service  
Committee on Government Reform  
and Oversight  
U.S. House of Representative  
Washington, D.C. 20515-6143

Dear Mr. Mica:

Enclosed are responses to questions you sent as a followup to the hearing held on December 6, 1995, regarding the Government shutdown. If any additional information is needed, please do not hesitate to let me know.

Sincerely,

  
Allan Heuerman  
Associate Director  
for Human Resources Systems

Enclosure

Enclosure

1. Q. Please describe any changes in planning, procedures, and operations that your agency made between the November and the December-January shutdowns. Please submit any revisions and/or supplements to your agency's shutdown plans. In light of the substantial change between shutdown numbers reported in the second shutdown, what changes are contemplated regarding the agency's definition of emergency functions? Please provide the new legal reasoning that supports this change from previous shutdown plans.

A. The Office of Personnel Management (OPM) was not affected by the December-January shutdown.

2. Q. Please submit the numbers of persons furloughed in each agency during the two shutdowns. For each function which was subject to furlough during the first shutdown, but exempted from furlough during the second shutdown, please provide policy and legal reasons supporting the decision to change the status of the functions.

A. OPM does not collect this information from other agencies. It is up to each agency to carry out its furlough by determining those activities that are exempt from furlough and by identifying those employees who will be furloughed.

With regard to our experience, OPM placed 2,124 employees in furlough status during the November shutdown and was not affected by the December-January shutdown.

3. Q. Please provide a report, by agency and by category, of all amounts and forms of premium pay (overtime, night differential, weekend differential, etc.) that was paid to employees who were furloughed during each shutdown.

A. OPM does not have access to the data that would be needed to respond to this question. Each agency is responsible for administering its own payroll system, and there is no Governmentwide data source that contains the amount of premium pay paid by each agency to each employee who was furloughed. However, the law governing premium pay for most employees is contained in title 5, United States Code, and furloughed employees who otherwise would have been regularly scheduled to work during the recent lapses in appropriations are entitled to retroactive payments for the following types of premium pay:

- overtime pay (5 U.S.C. 5542 and 5544(a))
- night pay/night differential (5 U.S.C. 5545(a) and 5343(f))

-2-

- Sunday premium pay (5 U.S.C. 5546(a) and 5544(a))
- holiday premium pay (5 U.S.C. 5546(b))
- hazard pay differential (5 U.S.C. 5545(d))
- environmental differential (5 U.S.C. 5343(c)(4)).

Affected employees also are entitled to the following types of premium pay, although few, if any, employees receiving such payments were furloughed:

- annual premium pay for standby duty (5 U.S.C. 5545(c)(1))
- annual premium pay for administratively uncontrollable overtime work (5 U.S.C. 5545(c)(2))
- availability pay for criminal investigators (5 U.S.C. 5545a).

"Regularly scheduled work" is defined in OPM's regulations as "work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks . . . ." (See 5 CFR 550.103.) The policy described above has been followed consistently with respect to retroactive payments following each lapse in appropriations since at least 1986.

The only category of premium pay that was paid to employees who were furloughed in OPM was night differential. To that end, 8 hours of night differential was paid to furloughed OPM employees totaling approximately \$ 9.12.

4. Q. Please provide a report, by agency, of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and the amounts paid to agency employees. Please describe any costs that will be incurred by your agency as a result of efforts to collect reimbursement of these payments after routine pay is restored.
- A. OPM does not collect this information from other agencies. With regard to our experience, OPM was affected by only the November shutdown. Since the November shutdown was too brief for employees to qualify for unemployment compensation, a collection effort is not necessary.

-3-

5. Q. Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.
  - A. The salary and benefits paid to OPM employees who were furloughed in November totaled approximately \$1,238,700. We also incurred some incidental costs such as printing, mailing, and travel in connection with the orderly shutdown of OPM and other Federal agencies.
6. Q. Please indicate the shutdowns' impact on programs funded through trust funds, fees, carry over funds, or other revenues not tied to annual appropriations. Please describe any changes made in implementing these programs during the December-January shutdown.
  - A. In accordance with guidance provided by OMB Bulletin 80-14, dated August 28, 1980, (amended by the OMB Director's memorandum of November 17, 1981 and updated by the Department of Justice opinion date August 16, 1995), positions in programs funded through trust funds, fees, carry over funds, or other revenue, were excepted from furlough in OPM. Funded exemptions in OPM included our training and investigations functions funded through a revolving fund, our retirement and insurance benefit functions funded through a trust fund, political appointees who are not subject to furlough, and fee-supported work in our employment service function. OPM was not affected by the December-January shutdown.
7. Q. Please provide staffing levels for all public affairs offices in the agency during the shutdown.
  - A. OPM's Office of Communications was responsible for keeping Federal agencies and departments informed with up-to-date furlough and re-opening guidance, as well as unemployment information. This included fielding calls from thousands of furloughed employees. Accordingly, six out of seventeen positions were excepted from furlough.
8. Q. Please provide a report of the number and furlough status of political appointees, noncareer Senior Executive Service personnel, and Schedule C appointees during each shutdown.
  - A. The following chart depicts the number and furlough status of OPM employees in political appointments during

-4-

the November shutdown. OPM was not affected by the December-January shutdown.

Political Appointment	Subject to Furlough	Excepted from Furlough	Total
Noncareer SES	1	4	5
Schedule C	10	3	13
Presidential	0	3*	3

\*Presidential appointees cannot be placed in a non-duty, non-pay status since they are not subject to 5 U.S.C. 6301 and attendant regulations.

9. Q. Please provide estimates of the numbers of employees and the amount of accrued annual leave that will be restored by your agency as a result of employees required to work during the second shutdown. Please describe any other effects that the second shutdown will have on the administration of employees' leave programs.
  - A. OPM was not affected by the second shutdown.
10. Q. Please describe for the Subcommittee the procedures required to complete the personnel actions for each furloughed employee. What efforts has OPM initiated to minimize the processing involved in these actions? What recommendations could you make to the Congress that would reduce the administrative burden associated with furloughs related to lapses in appropriations?
  - A. Section 7513 of title 5, United States Code, establishes the procedures agencies must follow in furlough situations. Under normal circumstances, each agency must prepare and distribute to each affected employee a proposed notice of furlough 30 days in advance; provide at least seven days for employees to answer orally and in writing to the proposed notice; notify employees of their right to representation and their right to appeal the action; and finally, issue a written decision notice to employees. The action would then be processed by the agency through the issuance of a Standard Form 50 (SF 50). In emergency situations such as lapsed appropriations, agencies are not required to provide 30 days advance written notice of the proposed furlough (5 CFR 752.404(d)(2)). However, agencies must still issue a written notice.

OPM took several steps to minimize the processing involved in these actions. We reminded agencies that the provisions of 5 CFR 752.404(d)(2) do not require an advance written notice and that employees could be

-5-

orally notified that they were furloughed, so long as a written notice of furlough was later provided.

Since Congress historically has authorized Federal employees to be paid for periods of furlough due to lapses in appropriations, we advised agencies to delay the processing of SF 50's pending completion of the furlough. Since employees were paid following each of the two recent shutdowns, agencies were not required to process SF 50's for the furloughed employees. This permitted agencies to avoid considerable administrative expense.

With regard to the issue of how to reduce the administrative burden associated with furloughs, we recommend that in situations where agencies have no discretion about whether employees should be furloughed (i.e., lapse in appropriations) the statutory requirements for furloughs be eliminated. Section 7513 of title 5, United States Code, requires that employees who are furloughed for 30 days or less be provided with certain rights and procedures similar to any other adverse action procedure, such as removal or suspension of more than 14 days. We believe that a furlough due to a lapse in appropriations is not the same as other adverse actions, where agencies have great discretion in determining what course of action to take. If the statutory requirements were eliminated in this situation, we would, of course, similarly eliminate the implementing regulatory requirements.

11. Q. During testimony the Subcommittee heard several examples of backlogs that would accumulate for each day of a potential shutdown. Please provide the Subcommittee with an inventory of the workload backlogs that your agency associates with the shutdowns. In light of OPM's January 17, 1996 guidance to restore all annual leave, please provide the Subcommittee with your management plan for reconciling the accumulated leave and the workload backlogs that resulted from the furlough periods.
- A. OPM was affected by only the November shutdown. As a result of the shorter duration of the November shutdown and the amount of time that has elapsed since that shutdown, OPM does not currently have a backlog associated with the November shutdown. Additionally, since the November shutdown took place early in that month, we do not anticipate any annual leave restoration requests resulting from the November shutdown.



## SOCIAL SECURITY

Office of the Commissioner

February 12, 1996

The Honorable John L. Mica  
Chairman, Subcommittee on Civil Service  
Committee on Government Reform and Oversight  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your letter of January 18, in which you submitted a number of questions regarding the Social Security Administration's (SSA) operations during the recent lapses in appropriations.

The responses to most of your questions are enclosed, but we have deferred answering those involving payroll and attendance data until we can obtain that information from our contract payroll provider. As a result of furloughs, there have been delays in updating the automated payroll and attendance system, and it will take several weeks for this information to become available. We will, of course, provide answers to those questions as soon as we can.

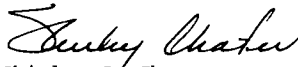
As you know, although lapses in appropriations do not affect funding for our benefit payments, they do affect funding for our administrative expenses. Thus, during these lapses, we are only authorized to carry out activities authorized by the Anti-Deficiency Act. Therefore, the actions we took were dictated by and fully consistent with the law and with actions of previous Administrations. We continued to administer our programs within the constraints of the Constitution and applicable statutes.

During a lapse of short duration, few SSA activities beyond continued payment of benefits were allowed. Thus, in November, we initially stopped all activities except those involving the payment of benefits.

An extended funding lapse, however, changes the circumstances and thus the application of the law. A growing backlog of unprocessed claims would jeopardize our ability to make timely and accurate payments. Thus, we determined that a lapse of more than a few days would require us to carry out certain additional activities, including accepting and processing new benefit claims.

While I am extremely proud of how our employees pulled together to continue to meet the basic needs of our customers, there is no doubt that the shutdowns affected our operations. SSA developed and committed to a plan to meet detailed performance objectives both in the President's Budget and at the House-passed funding level for Fiscal Year 1996. The furloughs resulting from funding lapses, combined with the continuing uncertain budget picture and multiple continuing resolutions throughout this fiscal year, have severely compromised our ability to meet these important performance objectives.

Sincerely,



Shirley S. Chater  
Commissioner  
of Social Security

Enclosure

1. Please describe any changes in planning, procedures, and operations that your Agency made between the November and December-January shutdowns. Please submit any revisions and/or supplements to your Agency's shutdown plans.

The changes in the operations of the Agency between the November and the December-January shutdowns are reflected in the four attached memorandums from SSA to OMB.

Attachments

**SOCIAL SECURITY**

Office of the Commissioner

January 5, 1996

The Honorable Alice Rivlin  
Director  
Office of Management and Budget  
Washington, D. C. 20503

Dear Dr. Rivlin:

This is to inform you that the Social Security Administration (SSA) has amended the contingency plan in effect during the ongoing lapse in Federal appropriations to include the processing of annual wage reports (AWR).

Beginning this week, SSA will receive nearly 235 million earnings reports for calendar year 1995 from employers and self-employed individuals. If processing of these reports does not begin immediately, the accuracy and reliability of SSA's claims processing would be seriously compromised, and a serious and permanent disruption of the Administration's ability to administer the trust funds would occur. Timely posting of wage information is necessary to recompute the benefit payments for three million working Social Security beneficiaries, as well as to compute the national average wage index for 1997. If AWR processing does not begin immediately, SSA will not be able to accurately compute the 1997 wage base by the statutorily required date, resulting in a permanent loss of receipts for the trust funds, as well as untimely or inaccurate benefit adjustments for 1997.

As a result, SSA is returning to duty 949 SSA employees, and in following past practices, is hiring 253 seasonal employees to handle this workload. Because this activity must take place at the Wilkes-Barre Data Operations Center, other alternatives are not available.

Sincerely,

A handwritten signature in cursive script, reading "Shirley S. Chater".

Shirley S. Chater  
Commissioner  
of Social Security

Social Security Administration  
Fiscal Year 1996  
CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1. Law enforcement activities		27
2. Protection of life and property		1,530
3. Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs		54,921
4. Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus		93
5. Services of officers holding offices established by law		14
6. Activities required for orderly phase-down and suspension of operations		665
Total number of staff to be retained		57,250*
Number of staff to be furloughed		9,255
TOTAL STAFFING		66,505

\*As of January 1, 1992. Excludes AWP staff



## SOCIAL SECURITY

Office of the Commissioner

DEC 12 1995

The Honorable Alice Rivlin  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Dr. Rivlin:

In response to your request for the Social Security Administration's (SSA) contingency plan for activities during a potential second lapse in Federal appropriations, I have enclosed a chart detailing those functions that would continue to be performed, and the staff that would be needed to perform them, in such eventuality. As you can see, I have determined that our trust funds and benefit programs could not tolerate another interruption of claims-taking activities at this time. Based upon our experience during the November 14 to November 19 lapse in appropriations and, more importantly, the loss of four full days of work occasioned by that lapse, any further interruption in service would have a devastating long-term impact on SSA's ability to process Social Security, Supplemental Security Income (SSI) and Black Lung claims. Due to the previous appropriations lapse, we must recover from our inability to process 112,000 new applications, 5,000 administrative hearings, 800,000 telephone calls, and a number of other workloads. As a result, SSA's field offices will remain operational for the taking of new applications and the continued processing of claims, including operation of State disability determination services and SSA's toll-free telephone service. These actions are necessary to appropriately administer the trust funds and benefit programs under our jurisdiction.

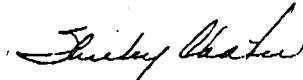
Social Security disability, retirement and survivor's benefits are funded through an indefinite appropriation that does not require the passage of annual appropriations legislation. Funds for Supplemental Security Income (SSI) and Black Lung benefits under the Federal Coal Miners Health and Safety Act have been appropriated through December 31, 1995. Although the administrative costs necessary to administer these programs are subject to annual appropriations that have not, as yet, been enacted, Department of Justice opinions indicate that continued appropriations for the benefit payments "necessarily implies" lawful administration of these programs, even in the absence of appropriations.

As I have indicated, any further interruption of claims processing would present difficulties which would be practically

insurmountable and would cripple SSA's ongoing ability to properly administer its trust funds and provide service to the public. The work that accumulated during the previous lapse, when added to what are already large backlogs in some areas, have placed the trust funds and benefit programs that we administer in a tenuous position. Any further hiatus could irreversibly impair SSA's capacity not only to distribute accurate payments to current beneficiaries, but also to process new claims and appeals "in the pipeline."

With our contingency plans, in the event of another lapse in appropriations, not only would SSA continue to pay benefits to current beneficiaries, it would take new applications for SSI and Social Security benefits, process pending applications and appeals, undertake critical post-entitlement actions, and perform those other activities necessary to properly carry out these functions. However, SSA would not process applications for Social Security numbers or replacement Social Security cards and would cease issuing personal earnings and benefit estimates and performing annual wage reporting activities. Those employees whose primary duties are staff support would be furloughed. Total staffing would be 55,992, and 10,203 employees would be furloughed.

Sincerely,



Shirley S. Chater  
Commissioner  
of Social Security

Enclosure

Social Security Administration  
Fiscal Year 1996  
CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1.	Law enforcement activities	27
2.	Protection of life and property	1,530
3.	Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs	53,663
4.	Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus	93
5.	Services of officers holding offices established by law	14
6.	Activities required for orderly phase-down and suspension of operations	665
Total number of staff to be retained		55,992
Number of staff to be furloughed		10,203
TOTAL STAFFING		66,195



## **SOCIAL SECURITY**

Office of the Commissioner

November 16, 1995

The Honorable Alice Rivlin  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Ms. Rivlin:

In response to the President's request for a review of agency shutdown plans in light of the unprecedented shutdown of the Federal government, we have determined that SSA must begin implementing Phase II of its contingency staffing plan on Monday morning, November 20, 1995 in order to begin accepting and processing claims. SSA is taking this action in order to appropriately administer the trust funds.

In addition to continuing benefit payments under the Social Security, Supplemental Security Income (SSI), the Federal Coal Miners Health and Safety ("Black Lung") programs, Phase II will involve recalling sufficient staff from furlough to administer these programs, including the taking of new applications. This action is essential for the SSA to carry out its responsibilities to the public to administer the trust funds for which it is responsible, and is consistent with the Department of Justice's advice concerning activities authorized during a lapse in appropriations.

Social Security disability, retirement and survivor's benefits are funded through an indefinite appropriation which does not require annual appropriations legislation. Funds for SSI and Black Lung Benefits have been appropriated through December 31, 1995. Although funds for the costs necessary to administer these programs have not been appropriated, the Department of Justice opinions indicate that continued appropriations for the benefit payments "necessarily implies" lawful continuation of such administration. An appropriations lapse which lasts for more than one to two weeks would cripple SSA's ongoing ability to properly administer its trust funds, and could irreversibly impair its capacity not only to distribute accurate payments to current beneficiaries of all of its programs, but also to process new claims and appeals "in the pipeline."

Phase II of SSA's contingency staffing plan would operationalize SSA's field facilities, including the reopening of SSA's toll-free telephone service, and State DDS facilities. Under Phase II, SSA would take and process new applications for SSI and Social Security benefits, and the agency would resume processing appeals. Under Phase II, however, SSA would not process applications for Social Security numbers, personal earnings and benefit estimates and annual wage reporting activities. Employees whose primary duties are staff support would continue to be furloughed. Approximately 49,715 staff will be recalled from furlough to ensure the payment of benefits to individuals who are eligible under our programs. Total staffing under Phase II of the contingency staffing plan will be 54,495. 11,700 employees will continue to be furloughed.

Sincerely,



Shirley S. Chater  
Commissioner of Social Security

Enclosures

Social Security Administration  
Fiscal Year 1996  
Phase I --- CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1. Law enforcement activities		5
2. Protection of life and property		111
3. Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs		4,418
4. Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus		62
5. Services of officers holding offices established by law		11
6. Activities required for orderly phase-down and suspension of operations		173
Total number of staff to be retained		4,780
Number of staff to be furloughed		61,415
TOTAL STAFFING		66,195

Social Security Administration  
Fiscal Year 1996  
Phase II--CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1. Law enforcement activities	5	
2. Protection of life and property	893	
3. Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs	52,979	
4. Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus	161	
5. Services of officers holding offices established by law	11	
6. Activities required for orderly phase-down and suspension of operations	446	
Total number of staff to be retained	54,495	
Number of staff to be furloughed	11,700	
TOTAL STAFFING		66,195



## **SOCIAL SECURITY**

Office of the Commissioner

September 14, 1995

The Honorable Alice Rivlin  
 Director  
 Office of Management and Budget  
 Washington, D.C. 20503

Dear Ms. Rivlin:

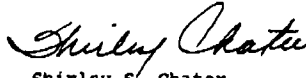
In response to your request of August 22, 1995, and following discussions with your staff, we are providing our contingency plan to deal with a possible appropriations hiatus. We have developed a staffing plan for suspension of operations in the event that neither a regular appropriations bill nor a fiscal year 1996 continuing resolution to allow operations at the current rate is enacted by October 1, 1995. The plan would be operational for 14 days.

According to the summary of the Justice Department's memorandum to the Office of Management and Budget (OMB), the Social Security program operates under an indefinite appropriation. Previously, the Department of Health and Human Services and OMB further interpreted Justice's opinion to mean that with respect to 31 USC 1341 (the Antideficiency Act), SSA has funding authority to continue to pay currently enrolled beneficiaries and maintain essential records for them. Legal authority also permits funding for Supplemental Security Income (SSI) and Black Lung benefits payable during the first quarter in the new fiscal year.

The staffing plan which is enclosed would provide for the minimum amount of activity necessary to assure the continued issuance of Social Security and SSI payments to those already entitled to receive them. This includes the retention of approximately three employees per field office and an additional 160 employees in other direct service positions. A total of 4,780 staff would be needed and 61,415 employees would be placed on furlough. The enclosure provides additional details on type of activities and staffing levels that would be needed during any appropriations hiatus. Under our plan, our national 800 number would not be in operation and callers would hear a recorded message advising them of the situation. We would not process applications for Social Security numbers nor would we process any applications for Social Security or SSI benefits. We would not process postentitlement (PE) actions, except for critical matters that affect payments. Our entire appeals process would also shut down. The State Disability Determination Services (DDS) would also be affected by any funding lapse. Therefore, we intend to notify the Governors, in writing, of the potential impact.

Once a funding lapse begins, if it appears that it could continue beyond a short period, we would need to reassess our ability to adequately administer the trust funds and SSI and Black Lung benefits consistent with existing law. We remain hopeful that actions can be taken to avert putting our plan into effect but we will be prepared to implement it if it becomes necessary to do so.

Sincerely,

A handwritten signature in cursive script, reading "Shirley Chater".

Shirley S. Chater  
Commissioner  
of Social Security

Enclosure

Social Security Administration  
Fiscal Year 1996  
CONTINGENCY STAFFING PLAN  
For Shutdown of Operations in the Absence of Appropriations

Category/Program		Total
1. Law enforcement activities		5
2. Protection of life and property		111
3. Operation of activities required to insure payment of entitlements under Social Security trust funds, Medicaid, Family Support Payments to States, SSI, and Disabled Coal Miners programs		4,418
4. Operation of activities required to make payments for grants and contracts awarded before the beginning of the hiatus		62
5. Services of officers holding offices established by law		11
6. Activities required for orderly phase-down and suspension of operations		173
Total number of staff to be retained		4,780
Number of staff to be furloughed		61,415
TOTAL STAFFING		66,195

2. Please submit the number of persons furloughed in your Agency during the two shutdowns.

The answer to this question is contained in the attached memorandums referenced in Question 1.

3. Please provide a report, by Agency and by category, of all amounts and forms of premium pay (overtime, night differential, weekend differential, etc.) that was paid to Agency employees who were furloughed during each shutdown.

We will provide this information as soon as it becomes available.

4. Please provide a report of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and the amounts paid to Agency employees. Please describe any costs that will be incurred by your Agency as a result of efforts to collect reimbursement of these payments after routine pay is restored.

During the shutdowns, we provided employees with information on the procedures for filing claims for unemployment compensation in their state. These procedures vary from state to state and many provide for employees to file claims directly with the states. Since the states handle the claims filed with them, we do not have information on the numbers of employees who filed claims and the amounts paid to them. With regard to the collection of reimbursement of these payments after pay is restored, we are following the instructions in the Labor Department memorandum of January 24, 1996. A number of states did not pay unemployment compensation to furloughed employees before pay was restored, so overpayments need not be collected for them. In the remaining states, there is some variation in the procedures for collecting overpayments. We do not know what the costs will be for collecting overpayments because we are currently working with the various states to determine what information we need to provide to them.

Attachment

U.S. Department of Labor

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, DC 20210

JAN 24 1996

MEMORANDUM FOR: ALL FEDERAL AGENCY ASSISTANT SECRETARIES  
FOR ADMINISTRATION AND MANAGEMENT  
AND/OR DIRECTORS OF PERSONNEL

FROM: MARY ANN WYRSCH *Mary Ann Wyrsh*  
Director  
Unemployment Insurance Service

SUBJECT: Unemployment Compensation for Federal  
Employees (UCFE) Program Overpayments Made to  
Furloughed Employees

During the recent partial shutdown of the Federal Government from December 15, 1995 to January 6, 1996, several States issued UCFE payments to furloughed Federal employees who were subsequently issued retroactive salary payments for the period of their furlough. This is likely to result in the establishment of overpayments for the furloughed employees who received UCFE payments.

Under the regulations of the UCFE program, the establishment and recovery of UCFE overpayments are made under the provisions of State unemployment compensation law. Accordingly, State Employment Security Agencies (SESAs) must determine if a UCFE overpayment has occurred under its State law, and after that determination has become final, the SESA commences the overpayment recovery actions permitted under its State law.

The Federal agencies affected by this partial shutdown have responsibilities under the UCFE program to assist the SESAs in carrying out their UCFE overpayment determination and recovery responsibilities. The Federal agencies should-

o Provide, as soon as possible, the following information to each SESA with whom UCFE claims were filed by furloughed employees--

- the name and social security account number of the furloughed employees,
- the amount of the retroactive salary payment made to each furloughed employee, and
- the period of time to which the retroactive salary payment applied.

- 2 -

This action is necessary to initiate the claims review and overpayment determination process. Unless the Federal agency notifies the SESA, it may not be able to commence the process.

- o Fully cooperate with the SESAs in their establishment and recovery of UCFE overpayments made to furloughed Federal employees.

Some State unemployment compensation laws provide that the employer (the Federal agency in this case), rather than the SESA, shall recover the overpayment from the claimant. In these States the employer, rather than the claimant, shall reimburse the State for the recovery of the overpayment. If a State unemployment compensation law has such a provision, the SESA of that State will contact the appropriate Federal agency to coordinate the recovery of the outstanding overpayment by the Federal agency and the Federal agency's reimbursement of the State.

This process is explained on pages VI-24 and VI-25 of the UCFE Instructions for Federal Agencies, issued March 1995.

If you have any questions concerning the contents of this memorandum, please contact Bob Gillham of the Unemployment Insurance Service at 202-219-5312.

5. Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.

We estimate the total cost of the two funding lapses to be \$77 million. These costs relate to salaries for furloughed employees, rent and maintenance for buildings that were not fully utilized and fees paid for services not rendered as discussed below:

SSA Payroll (\$66 million)

During the furlough periods payroll for SSA employees was about \$11.7 million per day. We estimate that the daily payroll cost for SSA employees furloughed during the first period was \$10.8 million and the daily payroll cost for SSA employees furloughed during the second period was \$1.8 million. Based on the duration of each furlough, the total SSA payroll cost of the shutdowns was \$66 million.

Disability Determination Services (DDS) Payroll (\$2 million)

All state DDS's remained open during the second furlough period temporarily using state funds until federal funds became available. However, thirteen state DDSs closed their offices during the first furlough period. Payroll and related costs for state employees who did not work during this period are estimated at about \$2 million.

Facilities (\$8 million)

SSA facilities were not completely closed during the two shutdown periods because some employees remained on duty to carry out excepted functions. We incurred full rental costs even though facilities were not fully utilized.

Services Paid for but Not Rendered (\$1 million)

During the shutdown periods some services were paid for but not rendered such as training classes paid for but not attended, guard services, medical/vocational expert fees, rent and maintenance of equipment, etc. We estimate the related costs at about \$1 million.

Although the agency clearly spent less during the shutdown periods we do not consider this to be "savings". Costs not incurred due to the lapses in funding (such as training) are costs deferred rather than saved.

6. Please indicate the shutdowns' impact on programs funded through trust funds, fees, carryover funds or other revenues not tied to annual appropriations. Please describe any changes made in implementing these programs during the December-January shutdown.

Title II benefit payments continued despite the shutdowns because they are covered by indefinite, permanent appropriations from the Social Security trust funds. Supplemental Security Income (SSI) and Black Lung benefits also continued despite the fact that they are paid from general fund appropriations. This is because Congress previously appropriated advance funds for the first quarter of fiscal year (FY) 1996 to cover SSI and Black Lung benefits.

Nonetheless, activities which are important to the integrity and overall effective management of our programs were interrupted during the shutdown periods. For example, issuance of new or replacement Social Security numbers (SSN) and verification of SSNs were deferred as was issuance of personal earnings and benefit estimate statements. Quality assurance reviews for all programs were interrupted. Payments to vendors were delayed. Monitoring of SSA's 800 number accuracy was stopped. Six hundred pending fraud complaints and 300 new complaints were not investigated. Job-related training was deferred. Collection and analysis of management information critical to efficient program administration was stopped.

7. Please provide staffing levels for all public affairs activities in the agency during the shutdown.

SSA had a total of fourteen public affairs employees on duty during the shutdown, four at Headquarters and 1 in each of the 10 Regional Offices. They handled public information requests, including claims-related telephone calls, Congressional inquiries, and other sensitive inquiries.

8. Please provide a report of the number and furlough status of political appointees, noncareer Senior Executive Service personnel and Schedule C appointees in your Agency during each shutdown.

Of eight noncareer SES appointees, six were excepted from both furloughs. The Agency had one Schedule C appointee who was furloughed. Decisions relating to political appointees were made in accordance with the same criteria applied for all Agency staff members.

9. Please provide estimates of the numbers of employees and the amount of accrued annual leave that will be restored by your Agency as a result of employees required to work during the second shutdown. Please provide the number of employees who might lose accrued annual leave as a result of their status during the shutdown. Please describe any other effects that the second shutdown will have on the administration of employees' leave programs.

We will provide this information as soon as it becomes available.

10. Please provide information about the numbers of employees who have taken annual leave during the months of December and January for each of the past five years. Please estimate the portion of staff taking leave during these times and the portion of the workforce on the job during these months in these years.

We will provide this information as soon as it becomes available.

11. The Subcommittee has received reports that your agency's managers gathered in San Francisco for a professional conference during the November shutdown. Please provide the Subcommittee with a schedule for this conference, the number of managers participating, the rationale for including this function under the definition of "emergency" activities. Please provide any guidance from the Office of Management and Budget, the Office of Personnel Management, the Department of Justice, or any other agency that might have provided guidance about the legal or operational necessity of this conference.

The conference in question was sponsored, scheduled, and funded by the National Council of Social Security Management Associations, Inc. (NCSSMA), which is a professional organization whose members are supervisors and managers in SSA's field offices and teleservice centers. The conference was scheduled for Tuesday, November 14, 1995, through Thursday, November 16, 1995, with some committee meetings scheduled for Monday, November 13.

Fifty-eight SSA employees attended the conference as NCSSMA officers, delegates, or alternate delegates and several members of SSA's executive staff attended as invited speakers to discuss current issues of interest to SSA field managers. In addition, some employees attended as nondelegates. No SSA funds were used to pay for travel or other expenses of NCSSMA members.

Due to travel considerations and committee meeting commitments, many attendees had arrived at the conference site in advance of the start of the shutdown on November 14. NCSSMA decided to continue the conference when the shutdown began. At that point, furloughed employees were free to continue in attendance. We understand that most excepted employees, including SSA executive staff, left the conference to take up their assigned duties as soon as travel arrangements could be made.

Should there be further questions concerning the conference, Mr. Don Seatter, President of NCSSMA, may be reached at (803) 727-4397.

12. Please provide the Subcommittee information about any overtime or other premium pay awarded to managers of Social Security field offices during the November shutdown. Please provide comparable data for the December-January shutdown. Please provide copies of the personnel guidance, whether internal or from OPM or other sources, that support decisions to provide premium pay for managerial responsibilities.

We will provide this information as soon as it becomes available.

13. During your testimony before the Subcommittee, you cited several examples of backlogs that would accumulate for each day of a potential shutdown. Please provide the Subcommittee with an inventory of the workload backlogs that your agency associates with the shutdowns. In light of OPM's January 17, 1996 guidance to restore all annual leave please provide the Subcommittee with your management plan for reconciling the accumulated leave and the workload backlogs that resulted from the furlough periods.

Backlogs created by the shutdowns include:

#### Public Inquiries

Approximately 3,500 inquiries are pending as a result of the furlough. We estimate that approximately 25% of those letters are from members of Congress and the majority of the remainder are from individuals regarding claims.

#### Hearings

Nearly all of the 10,000 hearings that were delayed because of the November furlough have been rescheduled.

#### Appeals

The appeals backlog has grown by approximately 1,000 cases as a direct result of the November furlough.

#### Certificates of Coverage

800 requests, which will require approximately 2,000 certificates, are currently pending. Prior to the furlough, we were able to issue certificates within 3 weeks of receiving the request. Because of the backlog created by both furloughs, it now takes 10 weeks to issue a certificate.

#### Social Security Number Applications

Processing of about 500,000 applications for Social Security numbers or replacements of Social Security cards was deferred until after the furlough ended. Most of this backlog was cleared quickly because it is not a labor-intensive operation.

Requests to use restored annual leave will be treated in the same manner as any request to use annual leave, including consideration of the impact of the employee's absence on office workloads. The additional accumulations of leave resulting from leave restoration are not expected to cause any significant problems because employees have until the end of 1998 to use restored leave.



DEPARTMENT OF VETERANS AFFAIRS  
ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION  
WASHINGTON DC 20420

FEB 12 1996

RECEIVED

FEB 12 1996

HOUSE COMMITTEE ON  
GOVERNMENT ORGANIZATION AND OVERSIGHT

The Honorable John L. Mica  
Chairman, Subcommittee on Civil Service  
House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Mr. Chairman:

This responds to your letter of January 18, 1996, with follow-up questions from the Subcommittee's December 6, 1995 hearing, "The Government Shutdown: What's Essential?"

Because of the decentralized nature of VA operations and the detailed nature of the questions, not all of the information is readily available. Enclosed are responses to questions 1, 2, 4, 7, 8 and 10. Responses to the remaining questions will be provided in approximately 30 days.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Eugene A. Brickhouse".  
Eugene A. Brickhouse

Enclosure

Follow-up Questions  
 Subcommittee on Civil Service  
 Hearing December 6, 1995  
 "The Government Shutdown: What's Essential?"

**1. Please describe any changes in planning, procedures, and operations that your Department made between the November and the December-January shutdowns. Please submit any revisions and/or supplements to your Department's shutdown plans. In light of the substantial change between shutdown numbers reported in the second shutdown, what changes are contemplated regarding the Department's definition of emergency functions? Please provide the new legal reasoning that supports this change from previous shutdown plans.**

Attached are copies of Departmental shutdown plans developed for Fiscal Year 1996:

- September 15, 1995 (implemented during November shutdown)
- November 17, 1995 (supplementary plan to recall a limited number of employees if the November shutdown had lasted more than one week)
- December 14, 1995 (implemented during December-January shutdown)
- January 23, 1996 (developed on the basis of the continuing resolution then in effect, PL 104-92; not implemented as no shutdown occurred)

Functions in VA which were originally determined to be excepted from shutdown during a lapse in appropriations include health care for veterans; police and security services; burial in VA national cemeteries; eligibility determinations for excepted activities; technical and support functions such as operation of automated systems and legal representation for excepted activities; and executive management and direction of the Department. These functions were determined to meet the exceptions for protection of life, safety and property permitted under the Antideficiency Act. Additional functions which are funded through revolving funds or means other than annual appropriations were also continued.

As reported in VA testimony at the December 6, 1995 hearing, an additional 1,700 employees of the Veterans Benefits Administration were determined to be excepted at the close of the November 1995 shutdown. These employees were needed to receive and date benefits claims, assist applicants in filing claims, and respond to inquiries about VA benefits. This was the only significant change in VA planning based on provisions of the Antideficiency Act.

Additional updates to planning data were made as necessary to reflect current employment information, to provide appropriate support for functions that had already been determined to be excepted, or (as described below) to incorporate terms of the current continuing resolution, rather than on new determinations regarding excepted versus nonexcepted functions.

The most recent plan (January 23, 1996) was developed based on the continuing resolution then in effect, PL 104-92, which provided for payment of all veterans benefits and for payment of contractors for goods and services necessary to patient care through the end of the fiscal year. Under this plan all those functions previously determined to be excepted under the Antideficiency Act (protection of life, safety and property) were continued, plus functions associated with the new categories of funded activities. This included field offices of the Veterans Benefits Administration, the Board of Veterans Appeals, and associated support activities such as legal representation and computer operations. At the time the January plan was prepared, a preliminary determination had been made to include "in kind" benefits such as provision of veterans grave markers; however, legal advice has since indicated that the continuing resolution would only apply to benefits involving financial payments. This issue has been clarified in the current continuing resolution, PL 104-99, and future plans, should they become necessary, will be modified appropriately.

**2. Please submit the numbers of persons furloughed in each agency during the two shutdowns. For each function which was subject to furlough during the first shutdown, but exempted from furlough during the second shutdown, please provide policy and legal reasons supporting the decision to change the status of the functions.**

Employees Furloughed November 1995  
(Plan Dated 9/15/95)  
36,354

Employees Furloughed December 1995 - January 1996  
(Plan Update 12/14/95)  
33,767

The decrease in number of employees furloughed reflects a determination that 1,700 employees of the Veterans Benefits Administration would be recalled to receive and date applications, assist applicants in filing claims, and respond to inquiries about VA benefits. Additional adjustments reflect more current planning data, such as the gradual decline in overall VA employment levels during the planning period, and more accurate estimates of the actual number of employees needed to perform excepted functions.

**4. Please provide a report, by agency, of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and the amounts paid to agency employees. Please describe any costs that will be incurred by your Department as a result of efforts to collect reimbursement of these payments after routine pay is restored.**

All furloughed employees were given the necessary forms and instructions to file for unemployment compensation. Some employees filed their forms through the employing activity (in VA approximately 230 facilities), some filed directly with the unemployment offices, and some never filed. Employees exercised their own options and judgment regarding this matter, and VA has no centralized source of information on the disposition of their claim forms.

Every quarter VA Central Office receives from each of the fifty States and the District of Columbia a list that contains the social security number, name, and amount of unemployment compensation paid each claimant charged to VA. This list is received approximately six weeks after the quarter ends. Most employees paid unemployment due to the furloughs will be reflected in the current quarter that ends March 30, 1996. We will receive the list approximately May 15, 1996 and will be pleased to provide the Committee with the total amount of unemployment compensation indicated. It should be noted, however, that the quarterly consolidated reports from the states and Department of Labor do not indicate the reason for unemployment (e.g., furlough, separation, resignation), and that the amount will presumably include costs which are not directly related to the shutdowns. Similar information for the same quarter of the previous year will also be provided, which may give the Committee some basis for comparison.

Each State and the District of Columbia have laws covering the collection of over-payments. Some States collect the over-payments, some States require the employer to collect over-payments, and some States do not consider retroactive pay an over-payment and allow the claimants to keep both pay and compensation. Given the diversity of policies and procedures in each jurisdiction, it is not possible to determine associated costs. However, we currently have all the employing facilities contacting their local Unemployment Offices to determine local State policies and to assist the State with any over-payment collections.

**7. Please provide staffing levels for all public affairs offices in the Department during the shutdowns.**

Two employees from the VA public affairs staff were excepted during the November 1995 shutdown (the Assistant Secretary for Public and Intergovernmental Affairs and the Deputy Assistant Secretary for Public Affairs), and three employees were excepted during the December 1995-January 1996 shutdown (the two employees excepted during the November shutdown plus one clerical support employee).

**8. Please report the number and furlough status of political appointees, noncareer Senior Executive Service personnel, and Schedule C appointees, by agency, during each shutdown.**

<u>Category</u>	<u>Employees</u>	<u>Excepted November 1995</u>	<u>Excepted Dec 1995/ January 1996</u>
Presidential Appointees	13	13	13
Schedule C	13	0	0
Noncareer SES	7	1	1
Total	33	14	14

**10. How many FTEs are needed to run the tape to pay the VA's compensation and pension benefits?**

We do not have information solely on processing compensation and pension benefits. We do have an estimate on the number of employees required to process both compensation and pension and education benefits. A total of 31 employees were required to run the February tape.

**List of Attachments (Shutdown Plans/Updates FY 1996):**

- **September 15, 1995 (implemented during November shutdown)**
- **November 17, 1995 (supplementary plan to recall a limited number of employees if the November shutdown had lasted more than one week)**
- **December 14, 1995 (implemented during December-January shutdown)**
- **January 23, 1996 (developed on the basis of the continuing resolution then in effect, PL 104-92; not implemented as no shutdown occurred)**

**Addendum to Shutdown Plan November 17, 1995**

**Supplementary Plan to Recall Limited Number of Employees if November Shutdown Had  
Lasted Over One Week**



THE DEPUTY SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

NOV 17 1995

Mr. John A. Koskinen  
Deputy Director for Management  
Office of Management and Budget  
Executive Office of the President  
Room 260 Old Executive Office Bldg.  
Washington, DC 20503

Dear Mr. Koskinen:

Enclosed as requested is the Department's response to questions related to a continuing lapse of appropriations and its affect on our operations.

Should the shutdown last more than one week, we would need to recall additional employees who are currently furloughed so that operations vital to the delivery of benefits and health care can be maintained.

Your early approval of this revised shutdown plan will be appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Hershel W. Gober".

Hershel W. Gober

Enclosures

## QUESTION 1

**DEPARTMENT OF VETERANS AFFAIRS  
UPDATE ON EXCEPTED/FURLOUGHED EMPLOYEES**

CURRENT ESTIMATE		REVISED ESTIMATE	
EXCEPTED	FURLOUGHED	EXCEPTED	FURLOUGHED
200,392	36,354	205,668*	33,411

\* This number includes 1,700 employees being recalled to help with benefits processing and 2,929 employees in Veterans Health Administration which is a more accurate estimate of the actual number of employees needed to provide and to support of delivery of health care.

## QUESTION 2

**EFFECT OF CONTINUING LAPSE  
OF APPROPRIATION  
VETERANS HEALTH ADMINISTRATION**

- An extended government shutdown will have significant impact on the ability of the Department of Veterans Affairs to continue providing quality health care to the nations veterans. A VA facility's ability to purchase goods, equipment, supplies, or services is dependent on the willingness of vendors and contractors to extend credit to the government. As long as vendors and contractors choose to continue providing goods and services without reimbursement, VA can continue to provide health care. In the absence of this willingness to "float" VA payments, health care may be curtailed. Examples of potential problems arising from VA's inability to pay for goods and services are provided below.
- House Staff Disbursements - Affiliated medical schools may not be able to pay 5,000 or more medical and dental residents' salaries. This will impair our ability to continue providing patient care at VA medical centers.
- Utility Service Contracts - Basic utilities such as electricity, natural gas and trash may be terminated due to non-payment of utility bills.
- Medical Equipment Service Contracts - Service maintenance contracts for MRI, CT and other major medical equipment in more than 100 medical centers may be terminated by the vendors for non-payment of services.
- Pharmaceuticals/Medical Supplies - Drugs and other pharmaceuticals supplies may not be replenished by vendors due to non-payment of previous drugs and supplies delivered. Stocks of some medical supplies such as sutures, bandages and adult diapers costing more than \$20 million per year may not be replenished by prime vendors.
- Basic Subsistence Supplies - Some local vendors are unwilling or unable to extend credit to VA facilities to purchase basic foodstuffs such as produce, meat and dairy products. Already, vendors in Beckley, West Virginia and San Juan, Puerto Rico are indicating that they will not be able to continue to provide food supplies on a credit basis.
- Contract Hospitalization and Fee Basis - Up to one million episodes of emergent care of veterans are provided in non-VA facilities and may not be available on a contract or fee-basis.
- Prosthetics Service Contracts - Local and small contracts may refuse VA orders to manufacture and repair prosthetic devices for VA patients without payment, leaving patients without artificial limbs, wheelchairs and other prosthetic devices.

## QUESTION 2

2.

## Veterans Health Administration

- **Construction Contracts** - Construction contracts totaling nearly \$500 million may be halted or delayed due to VA's inability to make regular payments. Subcontracts may default on their payments for labor and materials.
- **General Contracts** - Services such as ambulance and air ambulance may be terminated due to non-payment for previous services rendered.
- **State Veterans Homes** - As many as 16,000 veterans may be forced to relocate to VA medical centers or to be discharged due to non-payment for previous services.
- **Emergency Preparedness** - The Department of Veterans Affairs' ability to respond to national emergencies may be compromised by an extended government shutdown.
- **Employee Hardship Issues** - Interruption of employee payments may result in significant hardships to department employees. For example many employees may not possess sufficient resources to make mortgage, housing, transportation or medical care payments. In other instances, employee deductions for alimony, thrift savings plan, pensions, child support, or wage garnishment may result in legal difficulties.

## QUESTION 2

**EFFECT OF CONTINUING LAPSE  
OF APPROPRIATION  
VETERANS BENEFITS ADMINISTRATION**

- 3.3 million compensation and pensions checks totaling \$1.5 billion for veterans and other beneficiaries normally delivered December 1, 1995, will be delayed.
- For every week VA's regional offices cannot process claims, 7,000 retroactive compensation and pensions awards worth an average of \$13 million will be delayed.
- The current pending workload of compensation and pensions cases will grow by 11,000 cases per day. This will reverse FY 1994 and FY 1995 progress in reducing the backlog from almost 600,000 cases to 380,000 currently.
- 70,000 pending claims for educational assistance for this fall's enrollment have not been processed. This will increase by 10,000 if the shutdown goes one more week.
- 200,000 monthly GI Bill enrollment verifications are scheduled to be released on November 24. If these forms are not sent out and returned, veterans and other beneficiaries will not receive their monthly education benefit check.
- Nearly 1,000 seriously disabled veterans in VA's Vocational Rehabilitation program will be delayed in seeing a VA counselor each day the shutdown continues.
- For every week VA's insurance centers are not open, insurance death claim benefits would be delayed to 3,500 survivors at a value of \$19.2 million.
- Similarly, insurance dividend payments of \$18 million to nearly 45,000 veterans would be delayed each week a shutdown continues.
- The funds required for the pay period ending November 25 may not be available in time to provide regular paychecks and electronic funds transfer for employees scheduled for December 1 (EFT) and December 5.

## QUESTION 2

**EFFECT OF CONTINUING LAPSE  
OF APPROPRIATION  
OFFICE OF GENERAL COUNSEL**

- Currently, the Office of General Counsel (OGC) has designated only one legal advisor in each state as "essential" except in a few limited circumstances where the Department was involved in active judicial litigation. In VA Central Office, the OGC has designated only the General Counsel, the Deputy General Counsel and one administrative assistant as essential. We speculate that if the shutdown continues beyond this week; the following adverse consequences will occur. First, various pending litigation before various tribunals such as the EEOC, MSPB, FLRA, and COVA will be adversely affected due to lack of lawyers and legal staff to handle the cases. The affect of this will be to prolong decisions affecting the rights of management, employees and veterans. We also believe that high volume monetary collections in various legal programs administered by the OGC such as Medial Care Cost Recovery and bankruptcy will stop due to lack of personnel to process the cases. Government contracts requiring review by this office may also be delayed. Some of these contracts involve millions of dollars in Government obligations. Due to the scarcity of lawyers, all matters in the field requiring legal advice or review at our VA medical centers, national cemeteries and regional offices will be delayed. Finally, in VA Central office, pending legislative and regulatory matters requiring legal review and the processing and rendering of final Department decisions in information law and EEO matters will be adversely affected. The ultimate monetary cost to the Department due to the continued shutdown of the OGC is difficult to assess. However, it is clear that a sustained inability of this office to provide competent and timely legal advice both here and in the field will eventually subject both the Department and its employees to unnecessary legal risks and monetary loss.

## QUESTION 2

**EFFECT OF CONTINUING LAPSE  
OF APPROPRIATION  
OFFICE OF MANAGEMENT**

- The Department' Financial Management System has been unavailable to all system users since implementation of the VA's shut down plan on November 14, 1995. Since this time, vendor's have gone unpaid for both FY 95 and FY 96 invoices creating a potential serious crisis for VHA's Hospital System. Without payment, the hospitals will begin to have problems acquiring additional goods and services from these vendors. Medical Care unpaid obligations total \$2.57 billion. This will not address payment problems for obligations incurred since November 14 that are already occurring. These include payments for subsistence (primarily food) provided by local small business and beneficiary travel for veterans.

## QUESTION 3

**MAJOR CONTRACTS THAT WILL BE SUSPENDED  
DUE TO SHUTDOWN**

- Pharmaceutical Prime Vendors provide most of our pharmaceutical requirements (approximately \$3 million each day). These prime vendors work on a cash flow basis and as such, delays in payment have extreme consequences on their business environment. We are currently discussing the "shutdown" situation with them in hopes of averting an interruption of services, which would be extremely costly and, unless alternate sources of supply are found, life threatening.
- Nursing Home Care contracts. These health care providers require prompt payment. If the shutdown persists, these contractors could conceivably refuse further patients or require current patients be displaced.
- 8a/small businesses. We have been advised of a least one instance in which 8a firm, concerned that the payment interruption will mean an inability to meet payroll, will be required to suspend work. This will affect many things that the medical centers need to operate including many perishable food items.
- We are concerned that Prompt Payment Act penalties will accrue. For instance, with regard to pharmaceutical prime vendors, orders placed on November 14 would begin accruing interest penalties on November 30. By December 30, if we are still unable to pay our vendors, we will begin incurring interest payments against a principal of approximately \$90 million. (\$3 million per day in orders X 30 days).
- Contracts funded from the NCS operating appropriation that are suspended include those for maintenance of equipment of cemetery grounds; operating support contracts such as trash collection, pest control, and custodial services; and those for ADP services. Additionally, contracts for maintenance and repair projects at the national cemeteries will not be awarded during this period. Only contracts related to interments at closed or inactive national cemeteries, as well as any emergency contracts that may be required to protect life and property, will be funded during this period.
- There are also two types of contracts in NCS which are funded from the Compensation and Pensions (C&P) appropriation: Graveliners are needed to continue the essential interment function; therefore, contracts for the purchase of graveliners will continue. Processing of applications for headstones and markers had been discontinued during the shutdown; therefore, those contracts are currently suspended.
- Most all VBA contracts are suspended during the shutdown. This includes one time contracts for special studies, OIT contracts for systems design and development, maintenance, or installation; property management; non-ADP equipment maintenance; telecommunications, and administrative services.

Shutdown Plan December 14, 1995

Implemented During December 1995 - January 1996 Shutdown



THE DEPUTY SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

DEC 14 1995

Mr. John A. Koskinen  
Deputy Director for Management  
Office of Management and Budget  
Executive Office of the President  
Room 260 Old Executive Office Bldg.  
Washington, DC 20503

Dear Mr. Koskinen:

Enclosed is an updated shutdown plan for the Department of Veterans Affairs.

As requested, the updated plan reflects experience gained in the November shutdown, and indicates what adjustments would be necessary should a shutdown last more than one week.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hershel W. Gober", written over a horizontal line.

Hershel W. Gober

Enclosure

**DEPARTMENT OF VETERANS AFFAIRS**  
**PLAN FOR SHUTDOWN IN ABSENCE OF APPROPRIATION (1 WEEK OR LESS)**

OFFICE	PERFORM EXCEPTED OR FUNDED ACTIVITIES		PERFORM SHUTDOWN ACTIVITIES		IMMEDIATE AIRLIFTS		EXCEPTED ACTIVITIES EXPLANATIONS
	CO	Field	CO	Field	CO	Field	
Secretary	6				33		
Office of Small and Disadvantaged Business Utilization	12						
Board of Veterans Appeals	2		1		441		
General Counsel	8	59			210	392	Fid - Continue with existing court appearances; CO & Fid - Advise field facilities on legal issues re excepted activities; process COVA cases.
Board of Contract Appeals	2				10		
Inspector General	30				348		Support ongoing prosecutions in court & undercover work in progress
Public & Intergovernmental Affairs Management	4				62		
	181	266	45	130	383	533	CQ & Fid - Fiscal, including support of excepted activities and obligations incurred in FY 95; Supply (All Excepted-Non-Appropriated Funds), telecomm./computer support to excepted activities; process vendor payments
Human Resources & Administration	14		7		370		Provide protection of Secretary & conduct criminal investigation; HR support to excepted activities
Policy and Planning	1				85		
Office of Congressional Affairs	5		2		22		
Veterans Health Administration	37	199,051	10		748	18,443	Delivery & support of Health Care activities
Veterans Benefits Administration	13	2,068			483	10,236	Determine eligibility for benefits associated with excepted activities; receive & date claims; assist applicants; respond to benefit inquiries.

National Cemetery System	13	431		156	832	Provision of grave sites & interments; receipt of marker applications
TOTAL	328*	201,676	65	130	3,331	30,436

\*Includes 13 Presidential appointees  
Updated 12/12/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Health Administration  
Impact of Absence of Appropriations**

The Veterans Health Administration will discontinue all nonexcepted activities in its headquarters offices, medical centers, outpatient clinics, and other health care support facilities. Employees will be notified of their status; those who perform nonexcepted activities will be given furlough notices in accordance with shutdown guidance and be advised to listen to news broadcasts to learn if the funding situation has changed. Excepted activities to provide health care, research, and protection of life and property will be fully maintained.

**Medical Care**

No veteran will have his or her care delayed, deferred, canceled, or otherwise adversely impacted as a result of shutdown activities. In the field, excepted activities have been identified to include all direct patient care activities and those support activities necessary to assist direct patient care providers and maintain service to patients. All excepted activities will be fully maintained during any furlough period. All employees engaged in nonexcepted activities will be furloughed.

**Canteen Service**

The VA Canteen Service is funded by a revolving fund; therefore, all VCS activities will be fully maintained during any furlough period to support employees engaged in excepted activities.

**Protection of Life and Property**

Police and Security services will be provided in order to ensure the safety of veterans and their families and employees while in a VA facility. Continuation of these services is also necessary to protect and secure government property, buildings, and grounds. These services will be fully maintained during any furlough period.

#### Prosthetic and Medical Research

Many research projects in VA are funded by grants from outside sources, therefore, they will be fully maintained during any furlough period. Additionally, a number of projects are at critical stages where their shutdown could endanger the lives of patients who are participating in them as test subjects. These activities will be fully maintained during any furlough period. All employees not identified with these excepted activities or not otherwise funded will be furloughed.

#### VHA Headquarters Staff

Medical Administration and Miscellaneous Operating Expenses is a personnel intensive activity. A limited number of employees have been identified to perform excepted activities such as managing VHA's overall operations, organ transplantation issues, operational and policy issues for VA medical centers, allocation of resources to excepted activities, and oversight of construction contractual obligations. These activities will be fully maintained during any furlough period. Employees not identified with these limited excepted activities will be furloughed.

#### **Shutdown Over One Week**

In the event a shutdown were to last over one week, VHA estimates that an additional 900-1,000 employees would need to be recalled at any given time to respond to weather-related or other emergencies (estimate based on typical winter weather experience). Also, a small number of technical and clinical employees (approximately 10) would be recalled in Central Office to provide support and guidance to excepted health care activities in the field.

Updated 12/12/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Benefits Administration  
Impact of Absence of Appropriations**

The Veterans Benefits Administration will discontinue all nonexcepted activities in its headquarters offices, Area Offices, Benefits Centers, and Regional Offices. Employees who perform nonexcepted activities will be advised of their status, given furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if there is a change in the funding situation. Employees performing excepted services will be available to serve veterans and their families.

VBA employees identified as performing excepted activities in Central Office will oversee management of VBA excepted operations. Excepted employees at field stations will determine eligibility for benefits associated with other excepted VA activities (claims for burial, terminal illness, medical care), receive and process payments, receive and date benefits claims, assist applicants in filing claims, respond to telephone inquiries about VA benefits, manage issues involving government property, and maintain VBA automated records systems. These activities will be fully maintained during any furlough period.

**Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled in order to deal with emergency situations related to excepted activities.

Updated 12/12/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
National Cemetery System  
Impact of Absence of Appropriations**

The National Cemetery System will discontinue all nonexcepted activities in the absence of appropriations. Employees will be advised of their status, provided furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if there is a change in the funding situation.

Veterans and their families have placed reliance on the National Cemetery System to provide gravesites at their time of need. Denial of burial to these applicants would impose financial hardship, and in many cases, mental anguish. Delay of interment may also result in health hazards for employees or others. Therefore, the National Cemetery System will continue to bury eligible veterans during the period covered by the absence of appropriations. Central Office employees performing excepted activities will provide management direction and control, and operational support to the field. Employees in the field performing excepted activities determine eligibility for burial, supervise interment operations, receive applications for headstones and gravemarkers, and provide for property protection.

**Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled in order to deal with emergencies related to excepted activities.

Updated 12/12/95

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Headquarters Support Organizations  
Impact of Absence of Appropriations**

In the absence of appropriations, headquarters support organizations and their outstationed activities which provide technical assistance to other headquarters elements and to field operations will shutdown all nonexcepted activities. Employees will be advised of their status, provided furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if the funding situation has changed.

Employees retained to perform shutdown activities will secure all files and government property, notify customers of our reduced activity level, turn off computer operations, and leave their offices and enter furlough status.

Excepted activities performed during the shutdown period will include management of the department; information resources management and financial support to excepted activities through outstationed components in Austin, Texas; excepted activities of the General Counsel throughout the United States; and continuation of funded activities such as the Offices of Acquisition and Materiel Management and Small and Disadvantaged Business Utilization, which are funded through a revolving fund.

Acquisition and Materiel Management personnel will continue to secure and arrange for delivery of medical supplies and other essential goods to facilities where excepted activities are taking place. They will maintain contacts with vendors and ensure on time delivery of requested items.

The information resources and financial management employees in Austin will operate on-line systems and run situation-dependent required batch processing operations as needed in support of excepted activities. They will also process payroll for the periods prior to funding interruption, process payroll for funded activities, and, as part of shutdown activities, will process vendor payments for obligations incurred with prior year or otherwise available funds.

The General Counsel employees will continue with ongoing court appearances, process Court of Veterans Appeals cases, and provide guidance and advice to excepted activities as needed.

Employees performing excepted activities in headquarters will provide technical support to excepted activities in the field as well as to other headquarters organizations. Protection of life and property activities will continue. Included in these activities are protection of the Secretary, ongoing undercover work associated with criminal investigations, and investigations of incidents related to excepted activities.

**Note:** In the event of a shutdown December 15, 1995, estimates of furloughed employees include five employees of the VA Law Enforcement Training Center who would be required to work through December 22 in order to complete the basic class currently in session, and would then be placed on a furlough status.

#### **Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled to deal with emergencies related to excepted activities, or in order to implement administrative requirements for extending furloughs or similar functions.

Updated 12/12/95

## **VA Plan for Implementation of Furloughs in Event of Lapsed Appropriations**

### **Responsible Organization**

The Office of Human Resources and Administration (OH&RA) will be the responsible VA office for coordinating activities necessary to implement lapsed appropriation and similar furloughs including the following:

- 1) Be the point of contact with OMB and OPM on all matters related to potential furloughs;
- 2) Provide information regarding plans for furlough to the VA National Partnership Council;
- 3) Prepare instructions and guidance to all VA facilities regarding furlough issues, and
- 4) Conduce briefings/conferences to field and central office officials regarding furlough information and procedures.

### **Furlough Process**

OHR&A will provide in advance written procedures and master furlough notices to all VA organizations and ensure complete pre-furlough distribution to all facilities through a variety of electronic media.

OHR&A will initiate conference calls to ensure that each facility's lapsed appropriation contact official has complete understanding of procedures and the budget situation as it develops.

OHR&A will plan with all VA facilities that in the event that OMB advises that there will be no VA appropriations as of a given date, furlough notices will be delivered to affected employees consistent with available government-wide guidance.

Facilities will keep employees and unions informed as to the status of possible furlough, including exclusions from furlough.

Facilities will individually deliver all furlough notices to affected employees.

Each facility will inform all employees of the means by which employees will be notified to return to work after the furlough.

Shutdown Plan January 23, 1996

Developed on Basis of PL 104-92; Not Implemented As No Shutdown Occurred



THE DEPUTY SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

JAN 23 1996

Mr. John A. Koskinen  
Deputy Director for Management  
Office of Management and Budget  
Executive Office of the President  
Room 260 Old Executive Office Bldg.  
Washington, DC 20503

Dear Mr. Koskinen:

Enclosed are an updated shutdown plan for the Department of Veterans Affairs, and a copy of the data on furloughed versus excepted employees which was previously provided to your staff.

As requested, the updated plan is based on provisions of P.L. 104-92.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Hershel W. Gober".

Hershel W. Gober

Enclosures

**DEPARTMENT OF VETERANS AFFAIRS**  
**PLAN FOR SHUTDOWN IN ABSENCE OF APPROPRIATION (1 WEEK OR LESS)**

OFFICE	PERFORMS ESSENTIAL FUNDED ACTIVITIES		PERFORMS NON-FUNDED ACTIVITIES		MEDICAL PROGRAMS		EXCEPTED ACTIVITIES - FUNDING
	CO	Field	CO	Field	CO	Field	
Secretary	6				33		Executive direction of VA
Office of Small and Disadvantaged Business Utilization	12						Revolving fund
Board of Veterans Appeals	465						Adjudicate appeals of veterans benefits
General Counsel	11	210			201	241	Fid - Continue with existing court appearances; CO & Fid - Advise field facilities on legal issues re excepted activities; process COVA cases; protect property interests (loan guaranty)
Board of Contract Appeals	2				10		Adjudicate medical contract appeals
Inspector General	35				338		Support ongoing prosecutions in court & undercover work in progress; conduct sensitive investigations
Public & Intergovernmental Affairs	4				62		Public affairs support to excepted activities
Management	196	398	11		397	527	CO & Fid - Fiscal, including support of excepted activities; Supply (All Excepted-Non-Appropriated Funds), telecomm./computer support to excepted activities; process vendor payments
Human Resources & Administration	43		7		339		Provide protection of Secretary & conduct criminal investigations; HR support to excepted activities; management of funded contracts
Policy and Planning	3				59		Statistical support to funded/excepted activities

Office of Congressional Affairs	5		2		22		Legislative inquiries on excepted activities
Veterans Health Administration	37	199,051	10		748	18,443	Delivery & support of Health Care activities
Veterans Benefits Administration	245	12,023			245	85	Administer benefit programs for veterans
National Cemetery System	26	958			73	197	Provision of gravesites & interments; processing of markers; management of funded activities
<b>TOTAL</b>	<b>1,090*</b>	<b>212,640</b>	<b>30</b>		<b>2,627</b>	<b>19,483</b>	

\*Includes 13 Presidential appointees

Updated 1/22/96

Based on provisions of Continuing Resolution (P.L. 104-92)

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Health Administration  
Impact of Absence of Appropriations**

The Veterans Health Administration will discontinue all nonexcepted activities in its headquarters offices, medical centers, outpatient clinics, and other health care support facilities. Employees will be notified of their status; those who perform nonexcepted activities will be given furlough notices in accordance with shutdown guidance and be advised to listen to news broadcasts to learn if the funding situation has changed. Excepted activities to provide health care, research, and protection of life and property will be fully maintained.

Medical Care

No veteran will have his or her care delayed, deferred, canceled, or otherwise adversely impacted as a result of shutdown activities. In the field, excepted activities have been identified to include all direct patient care activities and those support activities necessary to assist direct patient care providers and maintain service to patients. All excepted activities will be fully maintained during any furlough period. All employees engaged in nonexcepted activities will be furloughed. Payments to contractors for services directly related to patient health and safety will be made as provided in P.L. 104-92.

Canteen Service

The VA Canteen Service is funded by a revolving fund; therefore, all VCS activities will be fully maintained during any furlough period to support employees engaged in excepted activities.

Protection of Life and Property

Police and Security services will be provided in order to ensure the safety of veterans and their families and employees while in a VA facility. Continuation of these services is also necessary to protect and secure government property, buildings, and grounds. These services will be fully maintained during any furlough period.

### Prosthetic and Medical Research

VA research projects are funded from a two-year appropriation; consequently, it was possible to continue funding during the first two FY 1996 shutdowns. However, because the two-year appropriation is now exhausted, any further shutdowns will result in a cessation of funding. Projects funded from non-VA sources, e.g., pharmaceutical companies, may be fully maintained during any future shutdown period. Additionally, projects will be maintained which are at critical stages where shutdown could endanger the lives of patients who are participating as test subjects. Excepted activities may also involve protection of the scientific viability of a project or the care of animal subjects. Employees not identified with excepted activities or not otherwise funded will be furloughed.

### VHA Headquarters Staff

Medical Administration and Miscellaneous Operating Expenses is a personnel intensive activity. A limited number of employees have been identified to perform excepted activities such as managing VHA's overall operations, organ transplantation issues, operational and policy issues for VA medical centers, allocation of resources to excepted activities, and oversight of construction contractual obligations. These activities will be fully maintained during any furlough period. Employees not identified with these limited excepted activities will be furloughed.

### **Shutdown Over One Week**

In the event a shutdown were to last over one week, VHA estimates that an additional 900-1,000 employees would need to be recalled at any given time to respond to weather-related or other emergencies (estimate based on typical winter weather experience). Also, a small number of technical and clinical employees (approximately 10) would be recalled in Central Office to provide support and guidance to excepted health care activities in the field.

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Veterans Benefits Administration  
Impact of Absence of Appropriations**

All veterans benefits programs will be administered at VBA field offices. Excepted employees will manage and deliver compensation, pension, education, loan guaranty, insurance, and vocational rehabilitation and counseling benefits, and will provide support operations such as information technology, finance, administrative services and management direction. VBA employees identified as performing excepted activities in Central Office will oversee management of VBA excepted operations.

Employees who perform nonexcepted activities will be advised of their status, given furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if there is a change in the funding situation.

**Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled in order to deal with emergency situations related to excepted activities.

Updated 1/22/96  
P.L. 104-92

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
National Cemetery System  
Impact of Absence of Appropriations**

The National Cemetery System will discontinue all nonexcepted activities in the absence of appropriations. Employees will be advised of their status, provided furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if there is a change in the funding situation.

Veterans and their families have placed reliance on the National Cemetery System to provide gravesites at their time of need. Denial of burial to these applicants would impose financial hardship, and in many cases, mental anguish. Delay of interment may also result in health hazards for employees or others. Therefore, the National Cemetery System will continue to bury eligible veterans during the period covered by the absence of appropriations. Central Office employees performing excepted activities will provide management direction and control, and operational support to the field. Employees in the field performing excepted activities determine eligibility for burial, supervise and conduct interment operations, process applications for headstones and gravemarkers, and provide for property protection.

**Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled in order to deal with emergencies related to excepted activities.

Updated 1/22/96  
P.L. 104-92

**Plans for Implementing a Shutdown  
Department of Veterans Affairs  
Headquarters Support Organizations  
Impact of Absence of Appropriations**

In the absence of appropriations, headquarters support organizations and their outstationed activities which provide technical assistance to other headquarters elements and to field operations will shutdown all nonexcepted activities. Employees will be advised of their status, provided furlough notices in accordance with shutdown guidance, and advised to listen to news broadcasts to learn if the funding situation has changed.

Employees retained to perform shutdown activities will secure all files and government property, notify customers of our reduced activity level, turn off computer operations, and leave their offices and enter furlough status.

Excepted activities performed during the shutdown period will include management of the department; information resources management and financial support to excepted activities through outstationed components in Austin, Texas; excepted activities of the General Counsel throughout the United States; and continuation of funded activities such as the Offices of Acquisition and Materiel Management and Small and Disadvantaged Business Utilization, which are funded through a revolving fund. As authorized under P.L. 94-102, adjudication of veterans benefits appeals and medical contracts appeals will continue.

Acquisition and Materiel Management personnel will continue to secure and arrange for delivery of medical supplies and other essential goods to facilities where excepted activities are taking place. They will maintain contacts with vendors and ensure on time delivery of requested items.

The information resources and financial management employees in Austin will operate on-line systems and run situation-dependent required batch processing operations as needed in support of excepted activities, including those associated with P.L. 104-92. They will also process payroll for the periods prior to funding interruption, process payroll for funded activities, and process vendor payments for obligations incurred with prior year or otherwise available funds.

The General Counsel employees will continue with ongoing court appearances, process Court of Veterans Appeals cases, protect property interests in the loan guaranty program, and provide guidance and advice to excepted activities as needed.

Employees performing excepted activities in headquarters will provide technical support to excepted activities in the field as well as to other headquarters organizations and will protect the government's interests in managing contracts which are fully funded and time sensitive (e.g., VACO renovation). Protection of life and property activities will continue. Included in these activities are protection of the Secretary, ongoing undercover work associated with criminal investigations, and investigations of incidents related to excepted activities.

#### **Shutdown Over One Week**

No significant change in the shutdown plan is anticipated. If necessary, a limited number of employees would be recalled to deal with emergencies related to excepted activities, or in order to implement administrative requirements for extending furloughs or similar functions.

Updated 1/22/96

P.L.104-92

## **VA Plan for Implementation of Furloughs in Event of Lapsed Appropriations**

### **Responsible Organization**

The Office of Human Resources and Administration (OH&RA) will be the responsible VA office for coordinating activities necessary to implement lapsed appropriation and similar furloughs including the following:

- 1) Be the point of contact with OMB and OPM on all matters related to potential furloughs;
- 2) Provide information regarding plans for furlough to the VA National Partnership Council;
- 3) Prepare instructions and guidance to all VA facilities regarding furlough issues, and
- 4) Conduce briefings/conferences to field and central office officials regarding furlough information and procedures.

### **Furlough Process**

OHR&A will provide in advance written procedures and master furlough notices to all VA organizations and ensure complete pre-furlough distribution to all facilities through a variety of electronic media.

OHR&A will initiate conference calls to ensure that each facility's lapsed appropriation contact official has complete understanding of procedures and the budget situation as it develops.

OHR&A will plan with all VA facilities that in the event that OMB advises that there will be no VA appropriations as of a given date, furlough notices will be delivered to affected employees consistent with available government-wide guidance.

Facilities will keep employees and unions informed as to the status of possible furlough, including exclusions from furlough.

Facilities will individually deliver all furlough notices to affected employees.

Each facility will inform all employees of the means by which employees will be notified to return to work after the furlough.



U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D. C. 20530

August 16, 1995

**MEMORANDUM FOR ALICE RIVLIN  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

From: Walter Dellinger  
Assistant Attorney General

Re: Government Operations in the Event of a Lapse in Appropriations

This memorandum responds to your request to the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations.<sup>1</sup>

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. See 31 U.S.C. § 1341 et seq.<sup>2</sup>

In the early 1980s, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act. See "Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations," 4A Op. O.L.C. 16 (1980); "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations," 5 Op. O.L.C. 1 (1981) (1981 Opinion). The 1981 Opinion has frequently been cited in the ensuing years. Since that opinion was written, the Antideficiency Act has been amended in one

<sup>1</sup> We do not in this memorandum address the different set of issues that arise when the limit on the public debt has been reached and Congress has failed to raise the debt ceiling.

<sup>2</sup> For the purposes of this inquiry, there are two relevant provisions of the Antideficiency Act. The first provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The second provides that "[a]n officer or employee of the United States Government . . . may not accept voluntary services . . . or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

respect, and we analyze the effect of that amendment below. The amendment amplified on the emergencies exception for employing federal personnel by providing that "[a]s used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

With respect to the effects of this amendment, we continue to adhere to the view expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger to Robert G. Damus, October 19, 1993. In order to ensure that the clarification of the 1990 amendment is not overlooked, we believe that one aspect of the 1981 Opinion's description of emergency governmental functions should be modified. Otherwise, the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.

# 1.

Since the issuance of the extensive 1981 Opinion, the prospect of a general appropriations lapse has arisen frequently. In 1981, 1982, 1983, 1984, 1986, 1987 and 1990, lapses of funding ranging from several hours to three days actually did occur. While several of these occurred entirely over weekends, others required the implementation of plans to bring government operations into compliance with the requirements of the Antideficiency Act. These prior responses to the threat of or actual lapsed appropriations have been so commonly referred to as cases of "shutting down the government" that this has become a nearly universal shorthand to describe the effect of a lapse in appropriations. It will assist in understanding the true extent of the Act's requirements to realize that this is an entirely inaccurate description. Were the federal government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill. Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping. The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result. In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate. Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed. Were the federal government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close

their doors. These are simply a few of the significant impacts of a federal government shut down. Cumulatively, these actions and the others required as part of a true shut down of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

The Antideficiency Act imposes substantial restrictions on obligating funds or contracting for services in advance of appropriations or beyond appropriated levels, restrictions that will cause significant hardship should any lapse in appropriations extend much beyond those we have historically experienced. To be sure, even the short lapses that have occurred have caused serious dislocations in the provision of services, generated wasteful expenditures as agencies have closed down certain operations and then restarted them, and disrupted federal activities. Nevertheless, for any short-term lapse in appropriations, at least, the federal government will not be truly "shut down" to the degree just described, simply because Congress has itself provided that some activities of government should continue even when annual appropriations have not yet been enacted to fund current activities.

The most significant provisions of the Antideficiency Act codify three basic restrictions on the operation of government activities. First, the Act implements the constitutional requirement that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. Second, when no current appropriations measure has been passed to fund contracts or obligations, it restricts entering into contracts or incurring obligations (except as to situations authorized by other law). Third, it restricts employing the services of employees to perform government functions beyond authorized levels to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.<sup>3</sup> The 1981 Opinion elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions, and we will only summarize the major categories here:

- Multi-year appropriations and indefinite appropriations.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social security is a prominent example of a program that operates under an indefinite appropriation. In such

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<sup>3</sup> These restrictions are enforced by criminal penalties. An officer or employee of the United States who knowingly and willfully violates the restrictions shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. §1350.

cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriation.

- Express authorizations: contracting authority and borrowing authority.

Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the "food and forage" authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication (the exception addressed next in the text), standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.

- Necessary implications: authority to obligate that is necessarily implied by statute.

The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations. Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception. In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized "to incur those minimal obligations necessary to closing [the] agency." The 1981 opinion reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.

- Obligations necessary to the discharge of the President's constitutional duties and powers.

Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the "President's obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry

out his constitutionally assigned tasks in the manner he contemplates." 1981 Opinion, at 6-7.<sup>4</sup>

- Personal or voluntary services "for emergencies involving the safety of human life or the protection of property."

The Antideficiency Act prohibits contracting or obligating in advance of appropriations generally, except for circumstances just summarized above. The Act also contains a separate exception applicable to personal or voluntary services that deal with emergencies. 31 U.S.C. § 1342. This section was amended in 1990. We will analyze the effects of that amendment in Part II of this memorandum.

Finally, one issue not explicitly addressed by the 1981 Opinion seems to us to have been settled by consistent administrative practice. That issue concerns whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded. The correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear. However, with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342.

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<sup>4</sup> The Attorneys General and this office have declined to catalog what actions might be undertaken this heading. In 1981, for example, Attorney General Civiletti quoted Attorney General (later Justice) Frank Murphy. "These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. . . . The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action." 5 Op. O.L.C. at 7 n.9 (quoting 39 Op. Att'y Gen. 343, 347-48 (1939)). This power should be called upon cautiously, as the courts have received such executive branch assertions skeptically. See, e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952); George v. Ishimaru, 849 F. Supp. 68 (D.D.C.), vacated as moot, No. 94-5111, 1994 WL 517746 (D.C. Cir., Aug. 25, 1994). But see Haig v. Acee, 453 U.S. 280 (1981); In re Neagle, 135 U.S. 1 (1890).

## II.

The text of 31 U.S.C. §1342, as amended in 1990, now reads:

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. § 1342. Because of the § 1342 bar on employing personal services, officers and employees may employ personal services in excess of other authorizations by law only in emergency situations.<sup>3</sup> This section does not by itself authorize paying employees in emergency situations, but it does authorize entering into obligations to pay for such labor.

The central interpretive task under § 1342 is and has always been to construe the scope of the emergencies exception of that section. When the 1981 Opinion undertook this task, the predecessor to § 1342 did not contain the final sentence of the current statute, which was added in 1990. Examining that earlier version, the Attorney General concluded<sup>4</sup> that the general language of the provision and the sparse legislative history of it did not reveal its precise meaning. However, the opinion was able to glean some additional understanding of the statute from that legislative history.

The Attorney General noted that as originally enacted in 1884, the provision forbade unauthorized employment "except in cases of sudden emergency involving the loss of human life or the destruction of property." 23 Stat. 17. He then observed that in 1950, Congress enacted the modern version of the Antideficiency Act and accepted revised language for

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<sup>3</sup> The 1981 Opinion concluded that:

[d]espite the use of the term 'voluntary service,' the evident concern underlying this provision is not government agencies' acceptance of the benefit of services rendered without compensation. Rather, the original version of § [1342] was enacted as part of an urgent deficiency appropriation act in 1884, Act of May 1, 1894, ch. 37, 23 Stat. 15, 17, in order to avoid claims for compensation arising from the unauthorized provision of services to the government by non-employees, and claims for additional compensation asserted by government employees performing extra services after hours. This is, under [§ 1342], government officers and employees may not involve government in contract for employment, i.e., for compensated labor, except in emergency situations. 30 Op. Att'y Gen. 129, 131 (1913).

§ 1342 that originally had been suggested by the Director of the Bureau of the Budget and the Comptroller General in 1947. In analyzing these different formulations, the Attorney General stated that

[w]ithout elaboration, these officials proposed that 'cases of sudden emergency' be amended to 'cases of emergency,' 'loss of human life' to 'safety of human life,' and 'destruction of property' to 'protection of property. These changes were not qualified or explained by the report accompanying the 1947 recommendation or by any aspect of the legislative history of the general appropriations act for fiscal year 1951, which included the modern §[1341]. Act of September 6, 1950, Pub. L. No. 81-759, §1211, 64 Stat. 765. Consequently, we infer from the plain import of the language of their amendments that the drafters intended to broaden the authority for emergency employment.

5 Op. O.L.C. at 9.

The 1981 Opinion also sought guidance from the consistent administrative practice of the Office of Management and Budget in applying identical "emergencies" language found in another provision. That other provision prohibits OMB from apportioning appropriated funds in a manner that would indicate the need for a deficiency or supplemental appropriation, except in cases of "emergencies involving the safety of human life, [or] the protection of property" -- phraseology identical to the pre-1990 version of § 1342.<sup>6</sup> Combining these two sources with the statutory text, the Attorney General articulated two rules for identifying functions for which government officers may enter into obligations to pay for personal services in excess of legal authority other than § 1342 itself:

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<sup>6</sup> 31 U.S.C. § 1515 (recodified from § 665(e) at the time of the Civiletti opinion). Analyzing past administrative practice under this statute, Attorney General Civiletti found that:

Directors of the Bureau of the Budget and of the Office of Management and Budget have granted dozens of deficiency reapportionments under this subsection in the last 30 years, and have apparently imposed no test more stringent than the articulation of a reasonable relationship between the funded activity and the safety of human life or the protection of property. Activities for which deficiency apportionments have been granted on this basis include [FBI] criminal investigations, legal services rendered by the Department of Agriculture in connection with state meat inspection programs and enforcement of the Wholesome Meat Act of 1967, 21 U.S.C. §§ 601-695, the protection and management of commodity inventories by the Commodity Credit Corporation, and the investigation of aircraft accidents by the National Transportation Safety Board. These few illustrations demonstrate the common sense approach that has guided the interpretation of § 665(e). Most important, under § 665(e)(2), each apportionment or reapportionment indicating the need for a deficiency or supplemental appropriation has been reported contemporaneously to both Houses of Congress, and, in the face of these reports, Congress has not acted in any way to alter the relevant 1950 wording of § 665(e)(1)(B), which is, in this respect, identical to § 665(b).

First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

While we continue to believe that the 1981 articulation is a fair reading of the Antideficiency Act even after the 1990 amendment, *see* Letter from Walter Dellinger to Robert G. Damus, October 19, 1993, we are aware of the possibility the second of these two rules might be read more expansively than was intended, and thus might be applied to functions that are not emergencies within the meaning of the statute. To forestall possible misinterpretations, the second criteria's use of the phrase "in some degree" should be replaced with the phrase, "in some significant degree."

The reasons for this change rest on our understanding of the function of the 1990 amendment, which comes from considering the content of the amendment, its structure and its sparse legislative history. That history consists of a solitary reference in the conference report to the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388:

The conference report also makes conforming changes to title 31 of the United States Code to make clear that . . . ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. Rep. No. 964, 101st Cong., 2d Sess. 1170 (1990). While hardly articulating the intended scope of the exception, the conference report does tend to support what would otherwise be the most natural reading of the amendment standing alone: because it is phrased as identifying the functions that should be excluded from the scope of the term "emergency," it seems intended to limit the coverage of that term, narrowing the circumstances that might otherwise be taken to constitute an emergency within the meaning of the statute.

Beyond this, however, we do not believe that the amendment adds any significant new substantive meaning to the pre-existing portion of § 1342, simply because the most prominent feature of the addition -- its emphasis on there being a threat that is imminent, or "ready to take place, near at hand," *see* Webster's Third New International Dictionary 1130 (1986) -- is an idea that is already present in the term "emergency" itself, which means "an unforeseen combination of circumstances or the resulting state that calls for immediate action" to

respond to the occurrence or situation. *Id.* at 741.<sup>7</sup> The addition of the concept of "imminent" to the pre-existing concept of "emergency" is thus largely redundant. This redundancy does, however, serve to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation. The structure of the amendment offers further support for this approach. Congress did not alter the operative language of the statute; instead, Congress chose to enact an interpretive provision that simply prohibits overly expansive interpretations of the "emergency" exception.

Under the formulation of the 1981 Opinion, government functions satisfy § 1342 if, *inter alia*, the safety of human life or the protection of property would be "compromised, in some degree." It is conceivable that some would interpret this phrase to be satisfied even if the threat were *de minimis*, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision. The brief delay of routine maintenance on government vehicles ought not to constitute an "emergency," for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may "compromise, to some degree" the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to be near at hand and demanding of immediate response.

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<sup>7</sup> See also Random House Dictionary of the English Language Unabridged 636 (2d ed. 1987) ("emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action"); Webster's II New Riverside University Dictionary 427 (1988) ("an unexpected, serious occurrence or situation urgently requiring prompt action").

**TESTIMONY OF  
WALTER DELLINGER  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF LEGAL COUNSEL**

**BEFORE A JOINT HEARING OF THE  
SENATE BUDGET COMMITTEE  
and the  
HOUSE BUDGET COMMITTEE**

**September 19, 1995**

Chairman Domenici and Chairman Kasich, Members of the Committees:

I appreciate the invitation to appear today before the Budget Committees from both Houses to discuss with you the executive branch's interpretation of the laws providing for government operations in the event of a lapse in appropriations. The Department of Justice welcomes this opportunity to have a full public discussion of the conclusions we have reached so far. In addition to answering your questions, we would very much like to have the benefit of your thinking, either this morning or after you have had an opportunity to consider further the submissions we have made. Any thoughts you have about the proper resolution of these often difficult legal questions will be most welcome by the Department of Justice and will be given careful attention as we continue the process of elaborating the applicable legal standards.

In recent weeks, the Office of Legal Counsel has been concentrating on the legal issues associated with a lapse of appropriations, and this is the focus of my remarks today. In the course of our analysis, we have reviewed and been guided by the 1981 opinion by Attorney General Civiletti interpreting the Antideficiency Act, which has formed the basis for contingency planning by the administrations of President Reagan and President Bush and by this administration. On August 16, 1995, I issued an Office of Legal Counsel memorandum reaffirming the conclusions of the 1981 Civiletti opinion and assessing the consequences of a 1990 amendment to the Antideficiency. Let me briefly sketch our interpretation of the law.

**INTRODUCTION**

Our starting point in addressing these questions is the Constitution itself. One of the Constitution's least heralded, but most fundamentally important, provisions is found in Article I, § 9. It reads:

**"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."**

This provision expresses what is commonly known as Congress's "power of the purse." It is no exaggeration to say that it is a principle for which patriots fought and died,

and it means what it says: without authorization by the vote of the people's representatives in Congress, not one dime can be spent from the United States Treasury.

Therefore, one consequence of a lapse in appropriations is mandated by the Constitution -- no one can be paid any money from the Treasury when the necessary appropriations bill has not been enacted. Should we reach October 1 without all appropriations bills having been signed into law, and no continuing resolution in place, employees cannot be paid, contract payments cannot be made, government rents cannot be paid, in all cases where the necessary appropriations bill is lacking.

If the government operated exclusively on a daily pay-as-you-go basis, a lapse in appropriations would necessarily mean that any and all activities of the government that required disbursements from the Treasury would just come to a halt. The government is not a daily pay-as-you-go operation, however. Consistent with Article I, § 9, it would be possible for the government to make contracts with individuals and firms for goods and services even when it currently lacked the funds to pay off those contracts. So long as suppliers, contractors and employees were willing to contract with the federal government on the basis of a promise to pay in the future, activities of government could continue on that basis -- but for the limitations embodied in the Antideficiency Act.

The Antideficiency Act provides that no federal official is permitted to contract or obligate funds before an appropriations measure has been enacted. By preventing the federal government from even obligating itself to pay for goods or services before Congress has made an appropriation, the Antideficiency Act reinforces the constitutional principle that the Congress must decide how much money to spend and how to spend it.

If the Antideficiency Act were an absolute bar on obligating funds in advance of appropriations, then the results would be just as I have described -- the entire portion of the federal government that requires annual appropriations would come to a halt. Congress, however, has not made the Antideficiency Act an absolute bar on obligating funds in advance of appropriations. It has instead provided for certain exceptions. For the functions covered by these exceptions the government may continue to obligate funds even though appropriations bills have not been enacted.

The exceptions to the Antideficiency Act do not necessarily reflect any considered judgment by the Congress as to which activities are crucial or essential and which are not. Instead, for reasons I will elaborate, there are a variety of different exceptions that permit some very discretionary and perhaps even insignificant functions of government to continue operating, while other, critically important activities must be curtailed.

## A. EXCEPTIONS TO THE ANTIDEFICIENCY ACT

### 1. Multi-year, Permanent, and Indefinite Appropriations

One initial explanation for a great deal of continuing functions of the federal government is that the Antideficiency Act does not by its own terms apply to a substantial portion of those functions at all. The Act only prohibits incurring obligations in advance of appropriations, and a majority of current government expenditures occur under multi-year, permanent or indefinite appropriations that do not lapse on the expiration of the current fiscal year. Some examples include social security payments, medicare payments and interest payments on the national debt.

Some salaries are paid out of permanent appropriations, too. Sometimes this occurs because salaries are paid out of a fund that collects fees from users. An example would be the lawyers in the Justice Department's antitrust division whose salaries are allocated to the account that collects merger pre-clearance fees under the Hart-Scott-Rodino law. Sometimes it occurs because Congress has simply enacted an appropriations measure that continues for a period of years or even indefinitely. An example would be the salaries of members of Congress.

In all these cases, obligations may be made and money may be withdrawn from the treasury to pay the recipients of these obligations. The Constitution is not violated because the sums in question are drawn from the Treasury "in Consequence of Appropriations made by Law." Congress has in fact enacted an appropriation, and the Antideficiency Act is not implicated because the expenditures or obligations are not taking place or being incurred in advance of an appropriation.

### 2. Employees Whose Continuing Work Does Not Incur Any Obligation

Some employees of the federal government operate under terms that obligate the federal government to pay them so long as they occupy a certain post or position, whether or not they are performing services. Examples include certain foreign nationals who are employed by the State Department in various localities where local labor laws create such terms. Certain high-ranking members of the executive branch who have been confirmed by the Senate, such as cabinet secretaries, provide other examples. In addition, the Constitution forbids the salary of the President or of Article III judges to be reduced while they are in office. The obligation to pay the salaries of these officeholders is created by the Constitution without regard to whether they actually perform services.

In these cases, the authority to incur the obligation to pay such individuals is contained in the Constitution or in the legislation that creates or authorizes such arrangements to be entered into in the first place. Furthermore, having such individuals actually perform

services during a lapse in appropriations does not incur any additional obligation -- the obligation already exists as a result of the original hiring, appointing, or electing of the individual. As a result, the Antideficiency Act is not violated if those individuals continue to work. Bear in mind always that the fact that monies are not appropriated to pay them means, of course, that they do not actually receive pay until funds are appropriated.

### 3. The Emergency Exception

The exception that probably explains the greatest number of employees who will not be furloughed during a lapse in appropriations is expressly stated in the statute. The Antideficiency Act, in § 1342, authorizes federal officials to "employ personal services" in "emergencies involving the safety of human life or the protection of property." In 1990 this provision was amended to clarify its scope, so that the statute now expressly states that the emergencies it refers to "do[] not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

This articulation is consistent with the advice that the Department of Justice had been giving since Attorney General Civiletti's 1981 opinion. The interpretations of the Department of Justice and the settled practice of the executive branch indicate that a function may be continued under the emergency exception if two conditions are met. First, there must bear some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

In applying the exception relating to property and life, it is necessary to make certain assumptions. For example, the continued functioning of FAA air traffic controllers is necessary only if the nation's airports remained open and air transportation were to continue. In this area, as in others, we have looked to past practice as an interpretive guide. With respect to any short lapse in appropriations, the consistent practice of past administrations has been to assume the continued operation of the private economy. Consequently, air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342. We have not determined whether this assumption would continue to be justified if a lapse in appropriations extended beyond a short period.

Because the Antideficiency Act authorizes federal officials to "employ personal services" to continue functions encompassed within the emergency exception, obligations to pay compensation may be given to those federal employees who perform emergency functions during an appropriations lapse. It is important to note, however, that these employees may not receive an actual payment of money from the Treasury unless and until

an appropriation is enacted. During an extended lapse in appropriations, the nation would be depending upon ability and willingness of prison guards, border officials, law enforcement agents, air traffic controllers and others to continue working even though they would not be receiving pay checks.

#### 4. Obligations Expressly Authorized by Law

In some cases, Congress has passed other legislation that authorizes the government to enter into obligations in advance of appropriations. Attorney General Civiletti's opinion concluded that such authorization cannot be derived from the sort of general authorizing statute Congress necessarily enacts when creating a government program. Rather, to be considered "expressly authorized," a statute must clearly authorize the incursion of obligations regardless of a lapse in appropriations. An example of such authority is the statute that permits the military to incur obligations on behalf of the United States in the absence of appropriations "for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies." 41 U.S.C. § 11(a).

#### 5. Obligations Necessarily Implied by Law

Attorney General Civiletti's opinion also recognized instances where the specific terms of a statute imposing duties upon or vesting authority in federal officers and employees lead necessarily to an inference that such officers or employees are authorized to incur obligations in advance of appropriations. It is on this basis, for example, that Attorney General Civiletti concluded that agencies may incur obligations in order to conduct an orderly termination of the unauthorized activities of the agency. The Attorney General interpreted the Antideficiency Act to require nonexcepted functions to terminate. He then reasoned that because it would in fact be impossible to terminate functions without incurring any obligations at all and because a statute that imposes a duty impliedly confers the authority to fulfill that duty, the Antideficiency Act itself requires, by necessary implication, federal officers to incur obligations associated with an orderly shutdown.

A second kind of necessarily implied authorization arises in situations where the government has a duty to continue an activity, but the administrative personnel necessary to carry forward that activity or function are funded through appropriations that have lapsed. The Civiletti opinion concluded that in such a case, Congress had impliedly authorized the staffing necessary to maintain the activity. The example he used was of the personnel in the Social Security Administration necessary to maintain the activity of disbursing social security benefits to eligible individuals.

## 6. The President's Core Constitutional Duties

The Constitution itself vests certain duties and powers in each of the three branches. As to the executive branch, the President's constitutional powers include the pardon power, the commander in chief power, the foreign affairs powers, the power to make recommendations to Congress, and the power to demand opinions in writing of the heads of departments. Attorney General Civiletti did not take an unduly broad view of this power. For example, he did not reason that, because the Constitution vests "the executive Power" in the President and charges him to "take Care that the Laws be faithfully executed," the President is "authorized by law" to carry out all statutorily vested executive power. Attorney General Civiletti did, however, read the Antideficiency Act as leaving with the President the authority to make "those obligations necessarily incident to presidential initiatives undertaken within his constitutional powers." Obligations incurred in undertaking these functions are "authorized by law"; viz., the Constitution.

For all three branches, but especially for the executive branch, the specific functions that they are constitutionally entitled to undertake will depend on the facts and circumstances surrounding the proposed activity. Whether a particular function is necessarily incident to the exercise of the President's foreign affairs power, for example, will depend upon the factual setting. Attorney General Civiletti recognized that where the President seeks to take action that is grounded in his constitutional authority, his assertion of authority is buttressed in those cases in which there are acts of Congress authorizing the activity asserted. He also observed that valid assertions of the President's constitutional authority are typically marked by both urgency and necessity.

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## B. NONEXCEPTED FUNCTIONS

It bears emphasizing that the Antideficiency Act mandates the termination of all functions other than the excepted functions set out above. As I have indicated, the functions that the Antideficiency Act allows to continue during an appropriations lapse are not determined by whether a particular activity is important or "essential" in some general sense. As a result, a number of functions that are, by any conception, important and essential must nevertheless terminate during a lapse in appropriations. In contrast, other functions that, if assessed in order of importance, would be unlikely to rank higher than many nonexcepted functions would nevertheless continue.

## C. THE DEBT CEILING

Finally, as Director Rivlin outlined, the situation in which neither an appropriations bill nor a continuing resolution has been enacted is entirely different from the situation in which the failure to raise the debt ceiling deprives the Treasury of authority to issue more debt as defined in the statutory debt ceiling, 31 U.S.C. § 3101(b). Among those differences

is this: In the case of a lapse of appropriations, Art I, § 9 of the Constitution prevents the Treasury from honoring any unauthorized claim for payment against the United States and the Antideficiency Act prohibits affected agencies from entering into many contracts or obligations to pay. By contrast, reaching the debt ceiling does not deprive the departments of the government of the authority to employ workers and otherwise enter into obligations. Nor does it deprive the Treasury of statutory authority to honor claims for payment. The problem would be, rather, that the Treasury may on any given day lack the funds to honor all the authorized claims that are submitted to it. In an extreme case, the government might face a calamity unknown in its two-hundred year history, namely a default by the United States on its debt obligations.

### CONCLUSION

The Antideficiency Act protects that central constitutional provision committing the power of the purse to Congress. It was drawn, however, with a specific context in mind. Unfortunately for present purposes, that context is not a general appropriations lapse. In 1820, when the first version of the Antideficiency Act was enacted, and through its formative revisions, Congress had in mind the practice, apparently common at the time, of executive branch agencies obligating more funds than had been appropriated for authorized activities in an attempt to force Congress after the fact to appropriate more funds than Congress had wished or chosen to appropriate.

Although the Antideficiency Act was not written with a general lapse in appropriations in mind, the act applies to that situation. Because its drafters did not consider the contingency of a general appropriations lapse, it is often difficult to apply to the many specific and often very complicated questions that attend a general appropriations lapse. For that reason, we rely heavily on the precedents of administrative construction and practice in issuing guidance on the application of the Antideficiency Act to a general appropriations lapse. Since the scope and contours of the Antideficiency Act are very often difficult to define, we are grateful for these hearings and welcome the opportunity to receive any thoughts or suggestions that members of the Committees might have.

RESPONSE TO QUESTIONS OF THE SUBCOMMITTEE ON CIVIL SERVICE  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
U.S. HOUSE OF REPRESENTATIVES  
DECEMBER 6, 1995

Please summarize for the subcommittee the functions performed by Justice Department employees who have continued to work during the shutdown, and explain the Department's rationale for continuing that work under the applicable standards and guidelines?

The core mission of the U.S. Department of Justice is the enforcement of the nation's laws and, consequently, the protection of life and property throughout the country and around the world. Additionally, about 10 percent of the Department's employees are funded through reimbursements, fee accounts, no-year funds, or carry-over funding which did not expire with the lapse in appropriations. In all, approximately 75 percent of the Department's employees were exempt from the recent furlough.

By appropriation, the workers who continued their functions were engaged in the following kinds of activities:

**General Administration (GA).** In addition to providing executive direction to the Department, employees provided mission-critical law enforcement applications for various components nationwide on a 24 hours-a-day, 7 days-a-week basis at the Justice Data Center, provided services relating to communications for senior managers and law enforcement personnel, and also relevant financial management services required for employees deemed "exempt" during the furlough period.

The Executive Office for Immigration Review (EOIR) exempted a number of its Immigration Judges so that hearings for incarcerated aliens could continue.

**Office of the Inspector General (OIG).** Employees continued criminal investigations and provided support services for exempt employees.

**U.S. Parole Commission (USPC).** Employees answered calls, responded to requests for emergency warrants and processed parole certificates.

**General Legal Activities.** Employees ensured that criminal litigation continued uninterrupted; sought continuances for all civil and appellate litigation; proceeded with civil and appellate litigation if attempts to secure continuances failed; provided legal advice to the White House and the National Security Counsel on national security matters; were

available to provide administrative advice and resource allocation guidance to Civil Rights Prosecution personnel and the Assistant Attorney General, Civil Rights Division, in the event of civil disorder; were available to respond to and investigate complaints of alleged criminal civil rights violations involving endangerment of life or property and to handle voting rights issues and complaints from institutionalized persons concerning life threatening situations. Also, employees provided uninterrupted communication among Federal, State, local, and international law enforcement entities.

**U.S. Attorneys.** These employees addressed criminal matters and civil matters of urgency, and to provided support to exempt employees.

**U.S. Marshals Service.** Employees carried out duties associated with judicial security, prisoner security and prisoner transportation. A limited number of employees provided overall direction and support to essential activities.

**Community Relations Service (CRS).** Employees provided resettlement, education, and conflict resolution services to over 14,000 Cubans at Guantanamo.

**United States Trustees Program.** These employees protected the United States Government from liability in bankruptcy matters and coordinated criminal matters with the U.S. Attorneys and the Federal Bureau of Investigation.

**Federal Bureau of Investigation.** All operations of the FBI are directed toward national security and the investigation of violations of law involving protection of life and property. Accordingly, all FBI agents and 70 percent of support personnel in the field were exempt. At FBI headquarters, all agents and approximately 85 percent of the support personnel are considered excepted. These staff members provided direction and investigative support to field operations. This includes the entire Criminal Justice Information Services Division which provides fingerprint identification services to criminal and national security investigations.

**Drug Enforcement Administration.** Employees provided oversight and direction to or carried out narcotics investigations around the world.

**Immigration and Naturalization Service (INS).** These employees provided overall direction to the agency; controlled the U.S. border and protected property; continued working on active criminal cases; detained in-custody

aliens; and conducted inspections of applicants for admission to the United States.

**Bureau of Prisons (BOP).** Staff at Federal correctional institutions maintained the custody of Federal inmates. At several institutions under construction, a small number of staff protected property and ensured security against compromise. Employees also continued inmate custody responsibilities over some 10,000 inmates in contract facilities.

**No previous shutdown lasted more than 3 days. Did the Department of Justice make any assumptions with respect to the length of the shutdown? If so, what time frame was assumed, and how did it affect the Department's decisions with respect to the functions and positions that were continued after the lapse of appropriations?**

The contingency plan which the Department submitted to the Office of Management and Budget was based on a 2-week lapse in appropriations. The plan and internal Department guidance recognized, however, that operational necessities could well -- and did -- dictate changes. For example, the initial plan did not provide a sufficient number of employees in United States Trustees' Offices to adequately represent the interests of the United States in the Bankruptcy Courts; as a result, additional employees were called back to duty. Similarly, the initial plan did not provide for a significant number of Immigration Courts to remain open, given the detention requirements of the Immigration and Naturalization Service.

Thus, the Department of Justice implemented its contingency plan with the assumption that flexibility would be required in its administration.

**How would your determination with respect to what functions or positions to continue change if the shutdown were to last:**

- a. 10 days
- b. 30 days
- c. 90 days

As noted above, the Department exercised flexibility in administering its contingency plan over the 6 days of the November 1995 lapse in appropriations. Similar flexibility would be required in the event of a longer lapse. As operational needs dictated, some employees who were initially furloughed would have been returned to duty (and,

perhaps, subsequently furloughed again); others who had remained on duty would have been furloughed.

The core principle would remain unchanged. The Department would retain on duty only those employees 1) who are paid from funds which have not lapsed or 2) whose work relates to emergencies involving the safety of human life or the protection of property.

**Please provide a description of your agency's functions and activities that were continued during this interruption of routine operations. Please indicate any special funding mechanisms (e.g., carry forward, trust funds, fee accounts, reimbursable agreements) used to support these continuing activities.**

Our response to 4th question above addresses the first part of this question.

The attached chart provides the special funding mechanisms available to the Department to continue certain operations during a furlough. The chart includes carryover funds for those accounts that had multi-year authority and for the fee accounts (largely for immigration activities), which do not require congressional action. The Federal Prison Industries and Commissary Fund are the Department's two trust funds that receive their funding from non-appropriated sources. The Troops to Cops funding from the Department of Defense is the major reimbursable agreement that provided resources during the funding hiatus.

**Please estimate the total costs to your agency associated with the interruption of operations between November 14 and November 20, 1995. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of this interruption of operations. Please provide, too, an estimate of any savings associated with this interruption of activities.**

The attached table provides the cost estimate associated with the funding hiatus for Department of Justice components. These costs are associated mainly with the salaries and benefits of furloughed Department employees (24.5 percent of total Department staffing). The personnel cost estimate for the furlough period was derived by multiplying the number of employees furloughed in each organization by the average salary and benefit cost. That total was prorated (as 3.5 furlough days of the 260 day workyear) to arrive at the cost for each organization.

Other unusual costs are noted on the second table. No savings have been identified.

Copies of relevant documents internal to the U.S. Department of Justice are attached.

04-Dec-95  
04:18 PM  
FURLOUGH

DEPARTMENT OF JUSTICE  
TOTAL PERSONNEL COSTS  
DURING FURLOUGH PERIOD

	NUMBER OF EMPLOYEES FURLOUGHED	AVERAGE SALARY	AVG SAL & BENEFITS (1.31%)	TOTAL COST (3.5 DAYS)
APPROPRIATION				
DISCRETIONARY				
FUNCTIONAL CODE: 750				
GENERAL ADMINISTRATION	500	49,690	65,094	516,998
ADMINISTRATIVE REVIEW AND APPEALS	433	47,192	61,822	360,348
OFFICE OF THE INSPECTOR GENERAL	249	54,583	71,504	239,675
COMMUNITY POLICING	...	...	...	...
WORKING CAPITAL FUND	560	49,690	65,094	490,708
U.S. PAROLE COMMISSION	85	46,471	60,877	53,287
GENERAL LEGAL ACTIVITIES				
OFFICE OF THE SOLICITOR GENERAL	29	60,318	79,017	30,847
TAX DIVISION	434	55,631	72,877	425,768
CRIMINAL DIVISION	509	62,798	82,283	563,658
CIVIL DIVISION	724	64,470	84,456	823,118
ENVIR. & NAT RESOURCE DIVISION	508	53,033	69,473	475,090
OFFICE OF LEGAL COUNSEL	21	49,831	65,279	18,454
CIVIL RIGHTS DIVISION	394	57,975	75,947	402,813
INTERPOL	49	43,625	57,149	37,696
ANTITRUST DIVISION	386	52,204	68,387	355,351
U.S. ATTORNEYS	5,128	80,050	104,856	7,238,848
U.S. MARSHALS	337	44,558	58,371	264,802
COMMUNITY RELATIONS SERVICE	107	63,299	82,922	119,439
U.S. TRUSTEES	904	40,832	53,228	847,743
ORGANIZED CRIME DRUG ENFORCEMENT	9	48,545	63,594	7,705
FEDERAL BUREAU OF INVESTIGATION	5,099	44,633	58,469	4,013,350
DRUG ENFORCEMENT ADMINISTRATION	1,582	53,541	70,139	1,493,685
IMMIGRATION AND NATURALIZATION SERVICE	4,240	30,635	40,132	2,290,803
FEDERAL PRISON SYSTEM:				
SALARIES AND EXPENSES	1,385	33,224	43,523	811,461
NATL INSTITUTE OF CORRECTIONS	...	...	...	...
BUILDINGS AND FACILITIES	...	...	...	...
FEDERAL PRISON INDUSTRIES	...	...	...	...
COMMISSARY FUND	...	...	...	...
FEDERAL PRISON SYSTEM	1,385	33,224	43,523	811,461
OFFICE OF JUSTICE PROGRAMS	376	59,421	77,842	393,998
SUBTOTAL, DOMESTIC DISCRETIONARY	24,118			22,075,520
FUNCTIONAL CODE: 150				
FOREIGN CLAIMS SETTLEMENT COMMISSION	4	57,095	74,794	4,027
SUBT, DISCRETIONARY AUTH.	24,122			22,079,547
MANDATORY				
FUNCTIONAL CODE: 750				
FEES AND EXPENSES OF WITNESSES	...	...	...	...
INDEPENDENT COUNSEL	...	...	...	...
SUBT, MANDATORY AUTHORITY	...	...	...	...
PRE-MERGER FILING FEES	...	...	...	...
U.S. TRUSTEES	...	...	...	...
DIVERSION CONTROL FEE	...	...	...	...
IMMIGRATION USER FEE	...	...	...	...
ENFORCEMENT FINES	...	...	...	...
IMMIGRATION LEGALIZATION	...	...	...	...
IMMIGRATION EXAMINATIONS FEE	...	...	...	...
LAND BORDER INSPECTION FEE	...	...	...	...
BREACHED BOND DET. FUND	...	...	...	...
SUBT, FEE-FUNDED ACCOUNTS	...	...	...	...
TOTAL, DEPARTMENT OF JUSTICE	24,122			22,079,547

DEPARTMENT OF JUSTICE  
UNUSUAL COSTS AS A CONSEQUENCE OF THE FURLOUGH

FEDERAL BUREAU OF INVESTIGATION	\$15,750	Costs associated with sending people home from training.
	\$221,974	Overtime costs associated with personnel having to catch up on work for days lost.
	Not available at this time	A contract to refurbish the firearms range at Quantico was sent out for bids. The three top bidders backed out during the furlough, so the FBI will have to use the fourth bidder which will possibly cost millions more in the future. The bid amount could not be furnished because they are procurement sensitive.
	Total	\$237,724
UNITED STATES MARSHALS SERVICE	\$23,000	Headquarters employees at the training academy in Georgia were recalled home, leaving 20 district personnel without instructors for a Financial Management Information System (FMIS) training class. This is the cost to cancel the class.
	Unknown	Courthouse design meetings in San Juan, Pittsburgh, Brooklyn, Greensboro, and Riverside were cancelled and must be rescheduled. The delay adversely impacts the courthouse renovation and construction schedules in these cities.
	Unknown	The security assessment and project specification meeting for the high threat trial in Lawton, OK for the Oklahoma City bombing trial was cancelled and must be rescheduled.
	\$5,000	Headquarters spent \$5,000 to recall a merit promotion work group on travel. The implementation schedule for the merit promotion plan has been set back several weeks.
	\$1,750	Prisoner Operations Division spent \$1,750 to recall three Headquarters employees on travel. The cancelled trips included an environmental impact statement at BOP's metropolitan detention center in Hawaii, a meeting to negotiate prisoner beds in San Diego, and an annual advisory board meeting sponsored by the National Institute of Corrections.
	Not available at this time	Inmate designations to BOP facilities have been backed up about one week. The average cost per day, per inmate, to remain in a local jail for this extended period is \$55.50. (The expedient nature of this drill precluded the data gathering for exact number of inmates involved).
	Total	\$29,750
IMMIGRATION AND NATURALIZATION SERVICE	\$4,300	Several attorneys were required to return from details.
	Unknown	Work that would have been done during the period of the furlough was delayed and added to backlogs. In most cases, overtime could be used to address the work affected, such as: personnel processing, routine accounting, and voucher processing.
	Total	\$4,300

## U.S. Department of Justice



Washington, D.C. 20530

August 21, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

A handwritten signature in dark ink, reading "Stephen R. Colgate".

SUBJECT: Contingency Planning for a Lapse in Appropriations

The purpose of this memorandum is to share with you guidance the Attorney General has provided with respect to the contingency plans you are preparing in the event it is necessary to furlough non-essential employees as a result of a lapse in appropriations. Your staff are preparing plans to be submitted no later than this Friday, August 25, 1995.

Generally, the Attorney General wants component heads to be conservative in designating employees as "essential," especially those in headquarters or other "overhead" functions and occupations. In drafting your plans, you should recognize that, in the event of a prolonged furlough, it will be possible to bring some employees back to work if the need for their services becomes essential -- and to furlough others -- as conditions change.

Specifically with respect to litigation, the Attorney General has given the following guidance, based on an assumption that the Judicial Branch will continue to operate through the furlough:

- Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property.
- Civil litigation will be curtailed or postponed, to the extent that the Courts will permit such an approach without harm to the interests of the United States. In the event that such an approach is not possible, civil litigation will continue without interruption as an activity essential to the protection of property.

Your staff may address any questions concerning this approach to their counterparts on the Budget Staff.

## U.S. Department of Justice



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Washington, D.C. 20530

August 23, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

A handwritten signature in dark ink, appearing to read "Stephen R. Colgate", written over the typed name and title.

SUBJECT: Contingency Planning for a Lapse in Appropriations

The purpose of this memorandum is to share with you additional guidance the Attorney General has provided with respect to contingency planning for a lapse in appropriations.

Several questions have arisen with respect to training activities which might otherwise be carried out in early October. In making your plans, you should follow these principles:

- Basic training of new employees in occupations which are generally designated as essential will continue. For example, new agent training for the Federal Bureau of Investigation and the Drug Enforcement Administration at Quantico and basic training of U.S. Marshals Service, Bureau of Prisons, and Immigration and Naturalization Service employees at the Federal Law Enforcement Training Center will not be interrupted.
- In-service training of current employees, even those in essential occupations, will be cancelled.
- Training of State and local officers (for example, in the National Academy Program) will be discontinued for the duration of the lapse in appropriations.

As indicated in my earlier correspondence on this subject, the Attorney General wants component heads to be conservative in undertaking any activities which could be viewed as "ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

Please contact me if you have any questions about this guidance.



U. S. Department of Justice

Washington, D.C. 20530

SEP 14 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE *Stephen R. Colgate*  
Assistant Attorney General  
for Administration

SUBJECT: Furlough Update and Informational Materials

Events of the last several days seem to have lessened the prospect of furloughs of federal employees, including many in the Department, on or about October 1, 1995. Nonetheless, we believe it is prudent to proceed with preliminary notifications to employees in the event that furloughs are necessary.

In the event of a shutdown, you will be required to issue official furlough decision notices to nonexcepted employees. Only those employees who, as identified in your recently approved contingency plan, perform "emergency" functions (i.e., whose duties involve the safety of human life or the protection of property) or whose salaries are paid from other than Fiscal Year 1996 appropriations will be permitted to work.

Certain materials are attached for your information and use. We will issue updates and additions to this information as conditions change--which we fully expect will be the case. You should take several steps to alert employees to the events which may occur:

- The Attorney General has signed a memorandum to all employees (copy attached) about the prospect of a furlough; you should ensure that it is distributed to all employees of your component.
- Consistent with any labor relations obligations you may have, you should provide your own notice to employees with more specific information about their benefits and entitlements and the meaning of the furlough. A draft memorandum which you may use for this purpose is attached, along with supplemental benefits information to provide to employees. We will update this information as it is revised and provide you with an amended paper to be attached to the furlough decision notice.

## Heads of Department Components

2

- Again, consistent with labor relations obligations, you should notify employees, by appropriate means, whether they are expected to report to duty in the event of a furlough (i.e., they are "excepted") or whether they will not be expected to report.

If furloughs do take place, the Department will activate a Furlough Information Hotline to provide employees current information. The hotline numbers will be (202) 514-1087 for Washington, D.C. Metropolitan Area callers and 1-800-521-6079 for long distance callers.

You should also begin your internal planning for the issuance of furlough notices to nonexcepted employees. To assist in that process, we have attached the following information:

- A delegation from the Deputy Attorney General giving you the authority to issue furlough decision notices to attorneys, members of the Senior Executive Service, and incumbents of senior-level (SL) and scientific or professional (ST) positions.
- A draft furlough decision notice for issuance to employees. You must also ensure that furlough decision notices are to be issued to employees on detail. These employees are subject to furlough in the same manner as employees who are not on detail.
- Merit Systems Protection Board (MSPB) form and MSPB regulations, which include the addresses of MSPB regional offices, where employees may file appeals. The appeal form may be given to employees with the furlough decision letter or when they return to work. Employees will also be able to obtain a copy of the appeal form from the Furlough Information Hotline.
- A Department Security Officer memorandum concerning the securing of sensitive and classified information during furlough.
- A time line of the Department's activities through October 2, 1995.

The draft materials will be provided electronically to components on the EAGLE and AMICUS networks. Three and 1/2" diskettes containing copies of the materials in WordPerfect 5.1 format will be provided for components which are not connected to the EAGLE/AMICUS network. Please have your staff contact Robert F. Seymour of the Justice Management Division Personnel Staff's Policy Group by September 15 to identify the contact person who should receive the diskette or the e-mail and to indicate your requirements for

## Heads of Department Components

3

diskette size and WordPerfect format if they differ from those described above.

To ensure employees are paid for pay period 19 (September 17-30, 1995), the last pay period in Fiscal Year 1995, the National Finance Center (NFC) will begin accepting Time and Attendance Reports (T&As) for pay period 19 as early as Monday, September 25, 1995. The NFC will continue to accept and process T&As through Saturday, October 7, 1995. However, since its own employees could be furloughed, NFC wants to receive T&A reports no later than close of business on Tuesday, October 3, 1995.

The Department of Labor is considering the establishment of a "special" unemployment compensation claims process to make it possible for Federal employees to file claims without having to visit State agency local offices, and for Federal agencies not to have to process wage and separation information on Form ES-931. Labor will issue information on and instructions for this "special" claims process by September 15, 1995.

The Department of Justice Federal Credit Union is offering generous loan terms to members, as described in the attached information.

We will continue to apprise you of developments concerning the shutdown of government operations, and provide updated guidance as it becomes available. Questions concerning this matter may be referred to Vivian Jarcho, Assistant Director for Policy, on (202) 514-6397.

Attachments



# Office of the Attorney General

Washington, D. C. 20530

September 12, 1995

## MEMORANDUM FOR ALL DEPARTMENT OF JUSTICE EMPLOYEES

FROM:

THE ATTORNEY GENERAL

SUBJECT:

Notice of Possible Furlough Due to a  
Lapse in Appropriations

I am sure that most of you have heard news and other reports about the prospect of furloughs if the Department of Justice appropriations bill for fiscal year 1996 or a continuing resolution is not passed by the Congress and signed by the President by October 1, 1995. The last few days have brought indications that such furloughs may be avoided. That is welcome news. However, I want to be sure that you have as much information as possible so that you can take the personal steps which would be necessary in the event furloughs occur.

During a "lapse in appropriations," agencies may not obligate funds except to maintain the minimum level of emergency activity and to effect an orderly shutdown of Government operations. Accordingly, furloughs would be required for all Department employees except for those who are performing excepted activities or shutdown activities, as defined by the Office of Management and Budget.

In a furlough, workers are placed temporarily in a nonwork and nonpay status. If fiscal year 1996 funds are not appropriated for the Department by October 1, 1995 and if you are not identified as an "emergency" (or "exempt") worker, you will be provided specific information as to the starting date and projected duration of the furlough and of any appeal rights you may have. Even those employees who are designated to report for duty may not receive paychecks during the appropriations lapse.

You and your colleagues across the country provide services vital to the well-being of our Nation and I fervently hope that we will avoid having to furlough any employees. However, in consideration of your own and your family's well-being, I must encourage you to consider and plan for the financial hardship that a furlough would bring.

I will make every effort to ensure that you are kept informed of developments in this situation.



## U. S. Department of Justice

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Washington, D. C. 20530**MEMORANDUM FOR ALL (COMPONENT'S NAME) EMPLOYEES**

**FROM:** Head of Component

**SUBJECT:** POSSIBLE FURLOUGH DUE TO A LAPSE IN APPROPRIATIONS

As we approach the beginning of fiscal year (FY) 1996, there have been indications that budgetary and policy differences between the Administration and the Congress may delay the passage of FY 96 appropriations. In years past, we have faced a lapse in appropriations and even gone through agency shutdown procedures. Such shutdowns have never exceeded a day or two, and the appropriations bill which finally passed allowed us to restore employee pay retroactively.

In the last few days, there have been positive signs that we will avoid a lapse in appropriations this year. However, prudence dictates that the Department -- and you as individuals -- make certain plans in the event that furloughs do occur. If furloughs occur and you are affected, you will begin to feel the impact on your personal finances on the pay day that falls on October 26, 1995.

We will make it a priority to keep you apprised of significant developments. However, quickly communicating any actual shutdown and return-to-work situations may be difficult since they may occur while you are not in a duty status. At such times, it will be your responsibility to stay informed of the situation through public news media and to return to work when funding has been restored.

In the event of a shutdown, official furlough decision notices will be issued to non-excepted employees. Only employees who perform "excepted" functions (i.e., whose duties involve the safety of human life or the protection of property) or whose salaries are paid from other than FY 96 appropriations will be permitted to work. You will be informed by your supervisor if your position falls in either of these categories.

The Department has established a Furlough Information Hotline to provide employees with furlough information. If furloughs become

All Employees of (Component Name)

a reality, the hotline will be activated on October 1, 1995. The numbers will be (202) 514-1087 for metropolitan area callers and 1-800-521-6079 for long distance callers.

Attached are several pages of information which should answer many of the questions you may have on how furlough would affect your benefits, pay, leave, and other important matters. We will update this material as more information becomes available.

Questions concerning this matter may be referred to the (indicate Executive Office, Administrative Office, Human Resources Office, or other office as appropriate).

Attachment



## **EFFECTS OF FURLOUGH ON EMPLOYEE BENEFITS AND OTHER IMPORTANT MATTERS**

### **EMPLOYEE BENEFITS**

**Health Benefits** - Enrollments in the Federal Employees' Health Benefits Program (FEHB) will continue for no more than 365 days in a nonpay status. The government's contribution will continue while employees are in a nonpay status. Employees premiums will accumulate during the furlough and contributions will be withheld from their pay upon return to duty.

**Cancelling FEHB Coverage While on Furlough** - Employees are cautioned not to cancel FEHB coverage to avoid payment of premiums while in a nonpay status or reduced-pay status. If cancelled, employees must wait for a FEHB open season to re-enroll. Further, cancellation of FEHB coverage may affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

**Life Insurance** - Enrollments in the Federal Employees' Group Life Insurance Program will continue for 12 consecutive months in a nonpay status without cost to the employee or the agency.

**Retirement** - Retirement coverage continues at no cost to employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay. The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.

**Thrift Savings Plan** - When an employee is in a nonpay status for an entire pay period, Thrift Savings Plan (TSP) employee and agency contributions are not made for that pay period. This is true even if the employee is receiving benefits from the Office of Workers' Compensation Programs. TSP contributions, including the agency automatic (1%) contributions made to the accounts of employees covered by the Federal Employees' Retirement System are based upon the basic pay the employee earned for the pay period. Because the employee's basic pay is zero, TSP contributions are zero. Employees cannot make up the missed TSP contributions when he or she returns to pay status.

If an employee receives some basic pay for working a portion of a pay period, the agency automatic (1%) contribution for the pay period is determined using the basic pay the employee earned for the pay period. The employee's contribution, based on a percentage of pay, is also determined by using the basic pay earned for the pay period. For contributions based on a whole dollar amount, the employee contribution is reduced to 10 percent of the employee's basic pay (if FERS) or 5 percent (if CSRS) if the elected amount exceeds the 10 or 5 percent limit. If the elected whole dollar amount exceeds the employee's net pay for the pay period, no employee contribution is made for the pay period.

**Thrift Savings Plan Loans** - Because under the TSP loan program, loan payments may only be made through payroll allotments, employees in nonpay status are not eligible to receive TSP loans until they return to pay status. If an employee who has a TSP loan misses payments for less than 90 days, the loan payment schedule will be extended. However, the loan must be repaid in full by the fifth anniversary of the loan issuance date for education, medical, or financial hardship loans and by the eighteenth anniversary of the loan issuance date for residential loans.

If an employee misses payment for 90 or more days and (a) the employee is in an approved nonpay status, e.g., furlough; and (b) the TSP has been so informed; and (c) the employee returns to pay status so that loan payments

resume within one year, the employee must reamortize the loan when he or she returns to pay status. If the employee fails to reamortize the loan, the loan must be prepaid in full. If the loan is not reamortized or prepaid in full, a taxable distribution will be declared.

In situations similar to that described above, except the TSP is not informed of the nonpay status and the employee does not return to pay status, the employee must prepay the loan in full at the end of the first year of the nonpay status or be subject to a taxable distribution of the unpaid loan principal and any accrued interest. The Department has notified TSP of those employees who have loans and are furloughed effective October 1, 1995.

### **PAY ISSUES**

**Pay Check for Pay Period ending September 30, 1995 - Time and attendance (T&A) reports for Pay Period 19 (September 17-30, 1995) will be processed by the National Finance Center (NFC). NFC will begin accepting T&A's for pay period 19 as early as Monday, September 25, 1995, and will continue to accept and process T&A's through Saturday, October 7, 1995. Employees will receive their pay checks by the October 12, 1995 pay day.**

**Holiday Pay During a Furlough - Employees are entitled to be paid for a holiday, if they are furloughed on the last workday before a holiday or the first workday after a holiday. This is based on the presumption that, but for the holiday, the employee would have worked. However, employees are not entitled to be paid for a holiday if a furlough includes both the last workday before the holiday and the first workday after the holiday. In this situation, there is no longer a presumption that, but for the holiday, the employee would have worked on that day.**

**Continuation of Pay - Employees who are receiving continuation of pay (COP) due to job-related injuries are maintained on COP status during periods of furlough.**

**Senior Executive Service Performance Awards - The payment of performance awards to Senior Executive Service employees may be delayed until after the furlough when funds are available.**

**Payment for Court Services - Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.**

**Workers' Compensation - Workers' compensation benefits will continue through the furlough period.**

**Deductions from Pay - When an employee's gross pay is insufficient to permit all deductions to be made, deductions are made in accordance with the order of withholding precedence established by the General Accounting Office. The order of precedence is as follows: (1) civil service retirement and Medicare, FERS (basic and Old Age Survivors and Disability Insurance (OASDI), or OASDI for those employees not covered by a Federal retirement system; (2) Federal income taxes; (3) health insurance premiums; (4) basic life insurance; (5) State income taxes; (6) city income or employment taxes; (7) indebtedness to the United States; (8) garnishment for alimony and child support payments; (9) court ordered bankruptcy payments under Chapter 13 of Title 11, United States Code; (10) optional life insurance -- additional first, standard second, and family third; (11) other voluntary repayments of indebtedness to the United States in the order specified by the employee; and (12) all other voluntary deductions, starting with the Thrift Savings Plan or repayment of loans from that plan for any employee (FERS or not) contributing to the thrift plan, and then allotments and assignments, which shall be made in the order determined by the paying agency.**

**Within-Grade Step Increases - Within-grade step increases are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status due to furlough for lack of funds, may affect the timing of such increases. The amount of workweeks in a nonpay status that is**

creditable towards completion of the required waiting period for within-grade step increases is as follows: two workweeks for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10. For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek in a nonpay status is creditable service for advancement to step 2; three weeks for advancement to step 3; and four weeks for advancement to steps 4 and 5. Thus, if a General Schedule employee in steps 1, 2, or 3 of the grade is furloughed for more than two workweeks during the waiting period, his or her within-grade increase would be delayed by at least a full pay period.

**Unemployment Compensation** - Federal employees are covered for unemployment insurance (UI) purposes under the Unemployment Compensation for Federal Employees (UCFE) program. The UCFE program is administered by the individual States, and UCFE benefits are generally determined and paid under the UI law of the State which the Federal employee worked.

State UI laws provide for the payment of partial weekly amounts when individuals are employed less than full-time during a week. State UI laws vary as to the number of hours and/or days the individual must be in non-employment status during a week in order to be eligible for a partial weekly payment, but in most cases, an individual in furlough status for 1 or 2 days during a week would not be eligible for a partial UCFE payment for that week. Individuals at grade levels of grade 9, step 5, and higher would need to be on furlough status for at least 4 days per week in order to be eligible to receive a partial UCFE payment for the week. In addition, most State UI laws provide that the first week of UI and (UCFE) eligibility is a non-paid "waiting week" and therefore, UCFE payments would not actually begin until the second week of eligibility in States with a "waiting week."

Individuals normally file UCFE claims at the State agency local office nearest to where they live or work. The address and telephone number of these local offices are listed under the State government sector in the local telephone directory. However, given the present furlough situation and the massive number of Federal employees who will be affected, the U.S. Department of Labor (DOL) will be implementing a "special" UCFE claims process for this shutdown only. DOL will issue guidance on this process by September 15, 1995.

### **LEAVE ISSUES**

**Leave Requests During Furlough** - The necessity to furlough employees due to lack of work or funds supersedes leave rights. Thus, all annual, sick, court leave, or leave for bone marrow or organ donation is cancelled during the furlough period. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty.

**Leave Without Pay During Furlough** - Employees who are on approved leave without pay (LWOP) during the furlough period may be continued in a LWOP status if there is no expectation that the employees may return to duty on the proposed furlough days. The LWOP may be terminated and employees placed in a furlough status. However, such action is unnecessary since there is no work or funds involved.

**Use or Lose Annual Leave** - Employees who have properly scheduled "use or lose" annual leave and are unable to use some or all of the scheduled leave because of a furlough should make every effort to reschedule the "use or lose" annual leave for use before the end of the current leave year. However, if this is not possible, authority may be granted to restore the leave after the beginning of the new leave due to an exigency of public business, i.e., the need to furlough employees because of lack of work or funds.

**Family and Medical Leave** - Furlough days cannot be counted towards the 12-week entitlement to leave under the Family and Medical Leave Act (FMLA). Employees cannot take leave under the FMLA on days that coincide with the dates of furlough.

### EMPLOYMENT AND INJURY WHILE ON FURLOUGH

**Employment during Furlough** - The standards of conduct for executive branch employees state in the definition of an employee that status as an employee is unaffected by pay or leave status. This means that Federal employees will still be considered to be employees when on furlough and thus subject to all of the rules on conduct.

The standards prohibit an employee from having outside employment that conflicts with his or her official duties. Employees remain subject to this requirement during furlough. Thus, an employee may not, now or during a furlough, work for an entity he can affect in carrying out his official responsibilities. Further, employees subject to any approval requirement for engaging in outside employment will remain subject to that requirement during furlough.

The only Department-wide requirement for seeking approval for outside employment goes to the practice of law. If an employee would like to practice law for compensation, now or during a furlough, he must obtain approval from the Deputy Attorney General. To engage in unpaid practice of law, he needs only to obtain approval from his component head. Employees of Bureaus may be required to seek approval before engaging in other employment in addition to the practice of law. Such employees should consult their Deputy Designated Agency Ethics Official for specific requirements. Generally, employees of the Offices, Boards and Divisions have no other approval requirement. For example, an OBD employee may, now and during a furlough, work for a fast food restaurant or a supermarket, as long as there is no conflict with his government duties, without obtaining approval. All employees remain subject to other restrictions on outside activities including restrictions on partisan political activities.

**Volunteering to Perform Your Job While on Furlough** - Agencies are not permitted to accept voluntary services of an individual unless authorized by law. Thus, an employee may not volunteer to do his or her job on a nonpay basis during a furlough period.

**Work on a Furlough Day in Exchange for Time Off for Religious Observances** - Employees may not work on a furlough day in exchange for taking a day off at another time for religious observances. The statute that permits employees to take compensatory time off for religious observances does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

**Injury While on Furlough** - Employees are not eligible for workers' compensation while on furlough. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough are not in a duty status for this purpose.

### SERVICE CREDIT

**Time-in-Grade** - Time in a nonpay status is creditable service for meeting time-in-grade requirements.

**Completion of Probation** - An aggregate of 22 workdays in a nonpay status is creditable service towards completing a probationary period.

**Retirement** - An aggregate nonpay status of six months in any calendar year is creditable service. Thus, there is no effect on an employee's high-3 average unless the furlough causes the employee to be in a nonpay status for more than six months during the calendar year.

**Career Tenure** - The first 30 calendar days of each nonpay period is creditable service towards meeting the service requirements for career tenure.

**Severance Pay** - Nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR

550.705. However, for purposes of determining service creditable towards the computation of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than six months of nonpay status time per calendar year is creditable service.

**Military Duty or Workers' Compensation** - Nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

**Annual and Sick Leave** - When an employee accumulates 80 hours of nonpay status, his or her annual and sick leave credits are reduced by an amount equal to the amount of leave the employee earns during that pay period. For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of six months nonpay status in a calendar year.

### **EMPLOYEE SERVICES**

**Department of Justice Recreation Association** - The Department of Justice Recreation Association facility located in the Main Justice building will be closed during the furlough period.

**DOJ Cafeteria** - The cafeteria in the Main Justice Building will be open during the furlough period.

**DOJ Federal Credit Union** - The DOJ Federal Credit Union (DOJFCU), located in the Main Justice Building, will be open during the furlough period. The DOJFCU has informed the Department that they are developing a series of plans to help ease the financial burden on employees being placed in a nonpay status. The plans include special loan programs to its members, the elimination of certain fees and penalties on savings and loan programs will be eliminated, and extended service hours to provide financial counseling. Additional information may be obtained directly from DOJFCU by calling (202) 842-3200 (local calls) or 1-800-842-3200 (long distance callers).

**Health Units** - To be determined.

**Justice Occupational Health Organization** - To be determined.

**Travel Management Center** - Beginning October 1, 1995, Omega World Travel (OWT) will replace Carlson-Wagonlit Travel as the Department's nationwide Travel Management Center. Omega's main reservation/ticketing location will be on the first floor of the Bicentennial Building at 600 E Street, N.W. A small branch office for ticket pick up will be located in the Main Justice Building, at the same location used by Carlson. These two sites are for employees of the Offices, Boards, and Divisions, and the Immigration and Naturalization Service. A reservation center will be located at 320 First Street, N.W. for employees of the Bureau of Prisons. A reservation center for employees of the Drug Enforcement Administration and United States Marshals Service will be located at 700 Army Navy Drive, Arlington, Virginia. Omega will be open during the furlough period.



Office of the Deputy Attorney General  
Washington, D.C. 20530

September 11, 1995

**MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS**

**FROM:** THE DEPUTY ATTORNEY GENERAL *BS*  
**SUBJECT:** Delegation of Authority to Issue Furlough Decision  
Notices to Attorneys, Members of the Senior  
Executive Service, and Incumbents of Senior-Level  
and Scientific or Professional Positions

To date, the Department of Justice's appropriations bill for fiscal year (FY) 1996 has not been passed by the Congress or signed by the President. As a result, non-excepted Department employees may be furloughed effective October 1, 1995, due to a lapse in appropriations. If furloughs are required, heads of Department of Justice components are hereby delegated authority to issue furlough decision notices to attorneys, members of the Senior Executive Service, and incumbents of senior-level (SL) and scientific or professional (ST) positions. This delegation of authority expires when the lapse in appropriations ceases.



## U. S. Department of Justice

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Washington, D.C. 20530

## MEMORANDUM FOR NON-EXCEPTED EMPLOYEES

FROM: (Head of Component)

SUBJECT: FURLOUGH DECISION NOTICE

This is to inform you that (cite the specific reason for furlough, e.g., the President has not signed the Department's appropriations bill for fiscal year (FY) 1996, and that Congress has not enacted a continuing resolution to cover the hiatus between appropriations). Consequently, the Department of Justice will be without funds on October 1, 1995.

Under the Antideficiency Act, no obligations may be incurred in the absence of appropriations except for the protection of human life or property, the orderly suspension of operations, or as otherwise authorized by law. Because your services are no longer needed for orderly suspension of operations and you are not engaged in excepted or emergency activities, you are being placed in a furlough status. The furlough status is effective October 1, 1995, or upon completion of shutdown activities which will occur no later than October 2, 1995. The furlough is not expected to exceed 22 workdays. You should listen to public broadcasts and when you hear that a continuing resolution or a FY 1996 appropriation for the Department of Justice has been approved, you will be expected to report to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 752.404 (d)(2).

If employees are being retained in your competitive level, they are required for orderly suspension of Department operations or they are performing excepted activities or shutdown activities as defined by the Office of Management and Budget.

During the furlough period, you will be in a nonpay, nonduty status. Also during the furlough, you will not be permitted to

serve as an unpaid volunteer, but must remain away from your workplace unless or until recalled. Since leave cannot be granted on a nonworkday, all annual, sick, court leave, or leave for bone marrow or organ donation is cancelled effective October 1, 1995, through the duration of the furlough period. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty. Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. Senior Executive Service career appointees adversely affected may also appeal. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. A copy of the MSPB regulations and appeal form and the addresses of the MSPB Regional Offices having jurisdiction over appeals will be available in your servicing personnel office once the furlough ceases. You may also obtain the material from the Department's Furlough Information Hotline.

The Department has established a Hotline to provide employees with furlough information. Callers from the metropolitan area should dial (202) 514-1087. For long distance callers, the number is 1-800-521-6079. Information which describes the effects of a nonpay status (due to furlough) on employee benefits and other matters is attached.


Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement or may appeal to the MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact your union representative.

Attachment

MERIT SYSTEMS PROTECTION BOARD  
APPEAL FORM AND  
REGULATIONS  
INTENTIONALLY OMITTED FROM FAX TRANSMISSION

## Memorandum



<b>Subject</b>  Securing of All Sensitive and Classified Information During Any Furlough Period	<b>Date</b>  AUG 31 1995
<b>To</b>  Security Programs Managers Senior Management Staff Justice Management Division	 Darryl Rubino Department Security Officer

In accordance with 28 CFR, Part 17, entitled "National Security Information," Department of Justice Security Programs Managers must ensure that all National Security Information in the possession of their respective organizations is appropriately stored/secured during any furlough period. At a minimum, sensitive information, systems and media should be stored in locked filing cabinets, locked desks, or locked rooms. Lastly, please properly secure all other valuable office equipment to avoid possible theft.

If you have any information or equipment which cannot be secured in an appropriate manner or if there is any security related situation requiring special attention, please contact me or the Special Security Center on 514-3738.

**FURLOUGH CONTINGENCY PLANNING  
COMMUNICATIONS PLAN**

**SEPTEMBER****WEEK OF SEPTEMBER 4**

- Issue memorandum from the Attorney General to all employees regarding the possibility of a furlough due to a lapse in appropriations for FY96.
- Attend OPM Interagency Advisory Group meeting to receive updated information and guidance on preparing for a furlough due to a lapse in FY96 appropriations or a failure to raise the debt ceiling.
- Prepare memorandum from Steve Colgate to the Heads of Components providing guidance on procedural issues, LMR responsibilities, delegations of authority for issuing furlough notices, effects of furlough on employee benefits and other important matters, and sample communications to employees
- Coordinate Personnel Staff efforts with Budget Staff  
Evaluate updates on the numbers of employees declared essential by building to provide information on the following:
  1. number of available staff in health units
  2. extent of delivery of cafeteria services in Main Building and other Federal buildings
- Coordinate with security staff on access to Department buildings (we will be following a holiday schedule) and shut down procedures for sensitive or classified information.
- Publicize that Travel Services will remain available for those employees deemed excepted. The Travel Management Center (TMC) Contract is paid for by the commissions the contractor receives for ticket sales, so no government funds actually support it. TMC operations will continue, although they will reduce staff in accordance with government reductions
- Attempt to receive answers on outstanding questions, i.e. new process for furloughed federal employees filing unemployment compensation that is being explored by the Department of Labor and expected to be decided by September 12.
- Write script for AG Hotline and discuss with Lam Hong, of TSS.

- NFC is working on a contingency plan in the event of a furlough. They don't have the specifics yet, but will be keeping us posted.
- Coordinate Credit Union proposal, DJRA closing, JOHO status.
- Issue memorandum from Steve Colgate to the Heads of Components providing updated guidance on the probable furloughs, including reminder that all employees should be notified as to their status, i.e. excepted or non-excepted to avoid confusion on October 1-2. (Assumes Department received approval of designations from OMB)

**WEEK OF SEPTEMBER 11**

- Advise components that an 800 telephone number has been established to provide recorded answers to employee questions. There will be a fax capability so employees can obtain written information on employee benefits, i.e. health and life insurance coverage, retirement benefits, TSP, workers compensation, leave and pay matters.
- Email draft furlough notices and draft decision letters to designees identified by the components. Save letters to diskette as requested by components without access to the eagle network and distribute per their specifications.
- Incorporate the Department's guidance on outside employment during the furlough into the paper on employee benefits and other important matters.

**WEEK OF SEPTEMBER 18**

- Prepare memorandum from Steve Colgate to the Heads of Components with any updates that are available from OMB or OPM regarding a furlough due to a lapse in appropriations.
- Monitor situation and disseminate additional department guidance as it becomes available.

**WEEK OF SEPTEMBER 25**

- Finalize arrangements in the event a furlough must commence on October 1 and employee shutdowns are completed on Monday, October 2.

- Disseminate any last minute instructions that are needed.
- Ensure that components have clearly identified excepted and nonexcepted employee and communicated these designations to all employees in the organization.

**SEPTEMBER 29TH (FRIDAY)**

- Notify all employees that they should report to work on Monday, October 2nd (or October 1st, for employees scheduled for weekend duty), even in the event of lapsed appropriations, to allow for the orderly shutdown of the agency.

**OCTOBER 1st**

- Activate AG furlough information hotline.

**OCTOBER 1st or 2nd**

- Suspend Departmental operations and give employees (other than those excepted from furlough) decision notices on furlough. Inform employees to listen to public broadcasts and report to work as instructed.
- Upon completion of orderly shutdown dismiss non-excepted employees.



Department of Justice Federal Credit Union  
*A Full Service Financial Institution*

DATE: August 31, 1995  
TO: Vivian Jarcho  
FROM: Jeff Moore *JM*  
RE: Credit Union Furlough Assistance

DOJFCU is most interested in providing whatever assistance we can to DOJ employees who are affected by a possible furlough. The assistance we anticipate providing includes:

1. Allowing existing members with loans to skip their required monthly loan payments during October.
2. Waiving late payment charges on loans in which payments could not be skipped (such as mortgage loans).
3. Allowing members with certificates of deposit to redeem their certificates of deposits without normally required penalties.
4. Provide loans to members, secured by their savings account, at a deeply discounted rate of 4.5%.
5. Provide loans to members, without collateral, up to the amount of their net deposit to the credit union at a rate of 6.0% (realizing the people who need the funds the most might be the ones whose credit are the worst, we are still prepared to extend this to every DOJFCU member who has their net deposit coming to DOJFCU).
6. Offer discounted rates on unsecured loans and home equity loans which can be used to consolidate debts and ease the financial burden of the furlough.
7. Provide extended hours in our facilities and with our phone operations between September 18 and September 28 so DOJ employees can discuss their needs.

While not all of the details have been worked out on all the above, these are the concepts with which we are working. I am sincere when I say I am open to any reasonable suggestion which you and John might have.



## U. S. Department of Justice

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Washington, D. C. 20530

November 17, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Stephen R. Colgate  
Assistant Attorney General  
for Administration

SUBJECT: Furlough Update #1

This is an update on several issues concerning the furlough of Department employees.

PAY CHECKS

**Pay Period 22 Salary Payments - Official Payday, November 22, 1995** Salary payments for this pay period (October 29 - November 11) are not affected by the furlough. Salary payments will be disbursed through normal distribution channels (Direct Deposit, Home Mail or Designated Agent delivery) during the week of November 19.

For those employees who have Direct Deposit, payments should be received by financial institutions no later than Tuesday, November 21, 1995. Please note that special arrangements may need to be made for employees who receive their pay checks via in-office, Designated Agent (DA) delivery. In the event that the DA office is unstaffed, a centralized point of contact should be designated and the employees notified as to where they can pick up their checks. For employees in the Offices, Boards, and Divisions, the centralized location is Room 1116, Main Justice Building.

**Pay Period 23 Salary Payments - Official Payday, December 7, 1995** At the present time, salary payments for this pay period (November 12 - November 25) are impacted by the current lack of funding which has resulted in the furlough of many employees. All employees will be paid for any approved leave and/or work performed on November 12 and November 13. However, as the required funding for the salaries of most Department employees lapsed at midnight on November 13, payment of salary for work

## Heads of Department Components

2

performed after November 13 is generally not authorized at this time. Those employees whose sources of funding are unaffected by the general budgetary crisis will be paid based on the complete Time & Attendance (T&A) record submitted for Pay Period 23. Specific guidance will be provided regarding the completion and transmission of Pay Period 23 T&As to address any unusual funding scenarios or other issues which may arise.

We intend to work closely with Component Finance and Personnel Officers to develop comprehensive instructions and guidance relating to salary expenses for Pay Period 23.

LEAVE

The attached guidance from the Office of Personnel Management (OPM) advises agencies that, after completion of shutdown activities on November 14, paid leave may not be charged during the furlough period. If an emergency employee requests and is approved to be absent from duty--e.g., for medical treatment--he or she should be furloughed for the approved time period.

UNEMPLOYMENT COMPENSATION

The attached guidance from the Department of Labor notes that furloughed employees will be eligible, after the waiting period established by the state in which the employee's duty station is located, for unemployment compensation. Please note that under the special filing procedures established for furloughed employees in the Washington, DC metropolitan area (see JMD Personnel Staff memorandum to Bureau Personnel Officers of November 9, 1995), the Department will electronically transmit the wages of all employees paid through the National Finance Center. The local jurisdictions have advised us that this electronic transmission eliminates the need for the agency to complete or sign the claim form. (All claims forms should indicate that the employee works for the Department of Justice. Claim forms for employees working in Maryland should be annotated with this claim number: 0065643006.) The Justice Management Division is mailing the necessary forms to the home address of each Washington, D.C. metropolitan area employee of the Offices, Boards, and Divisions and other components that have requested this service.

Please advise employees outside of the metropolitan Washington, D.C. area to contact their local state unemployment office to obtain the necessary form(s) to claim their benefits.

Heads of Department Components

3

The Furlough Information Hotline (202-514-1087 or 1-800-521-6079) will be updated to reflect this information. If members of your staff have questions concerning this matter, they may call John Cahill of the Personnel Staff's Policy Group on 514-6778.

Attachments

cc: Bureau Personnel Officers

# INTERAGENCY ADVISORY GROUP

UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, DC 20415

Secretariat  
1900 E St., NW

NOV 17 1995

## MEMORANDUM FOR DIRECTORS OF PERSONNEL

FROM:

  
ALLAN D. HEURMAN  
ASSOCIATE DIRECTOR  
FOR HUMAN RESOURCES SYSTEMS

SUBJECT: Supplemental Q's and A's on Furlough Issues

The following supplemental questions and answers have been prepared in response to questions received by the Office of Personnel Management and the Office of Management and Budget on furlough issues affecting both excepted and nonexcepted employees since the lapse in appropriations that began on November 14, 1995.

As used below, the term "EXCEPTED EMPLOYEES" refers to employees who are excepted from a furlough because they are performing functions related to national security, protection of life or property, or the orderly suspension of agency operations. (Employees in organizations not affected by the lapse in appropriations are governed by the regular leave rules.) OPM will provide additional Q's and A's as the need arises.

- Q1. NONEXCEPTED EMPLOYEES reported for work at different times on Tuesday, November 14, and worked varying periods of time before departing on furlough after OMB instructed agencies to implement their phase-down plans. May nonexcepted employees who reported for work on November 14 be considered to have been furloughed for a uniform period of time on that day, or should agencies determine the number of furlough hours on a case-by-case basis for each nonexcepted employee?
- A1. OPM recommends that agencies make an effort to determine, on a case-by-case basis, the amount of time each nonexcepted employee worked on Tuesday, November 14. The remaining period of time in the employee's regularly scheduled tour of duty (after taking into account part-time work schedules, uncommon tours of duty, or previously approved flexible or compressed work schedules) would then be considered furlough time, even if the employee had previously been scheduled to take paid or unpaid leave later in the day.
- Q2. How should agencies treat EXCEPTED or NONEXCEPTED EMPLOYEES who were on approved leave on November 14 when the furlough took effect and did not report for work for the rest of the day?

- A2. Both **EXCEPTED** and **NONEXCEPTED EMPLOYEES** should be charged the appropriate kind of leave for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. The remaining period of time in the employee's regularly scheduled tour of duty would be considered furlough time. However, an agency may subsequently terminate the furlough if the employee's services are required for excepted activities following the absence and the employee is able to report for work.
- Q3. After Tuesday, November 14, may **EXCEPTED EMPLOYEES** take previously approved annual leave, sick leave, or other paid leave during the lapse in appropriations?
- A3. No. When an employee is not at work and performing the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:
- (1) cancel any approved leave and require the employee to report for work; or
  - (2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough if the employee's services are still required for excepted activities following the absence.
- Q4. May **EXCEPTED EMPLOYEES** be granted new requests for annual leave, sick leave, or other paid leave during the lapse in appropriations?
- A4. No. If an **EXCEPTED EMPLOYEE** requests paid leave or is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, the agency must take one of the following actions:
- (1) deny the request for leave and require the employee to report for work; or
  - (2) furlough the employee during the period of unavailability. An agency may subsequently terminate the furlough if the employee's services are still required for excepted activities following the absence.

Questions may be directed to the Office of Compensation Policy, Compensation Administration Division, on (202) 606-2858, or the Office of Labor Relations and Workforce Performance on (202) 606-2920.

Received from the U. S. Department of Labor  
Unemployment Insurance Systems

11/17/96

**UNEMPLOYMENT INSURANCE INFORMATION FOR FEDERAL EMPLOYEES  
DURING A SHUTDOWN OF FEDERAL AGENCIES**

The duration of the current shutdown of the federal government, and the furlough of 800,000 federal employees has lasted longer than any previous shutdowns, and longer than anyone anticipated.

While Congressional leaders have pledged to pass legislation to ensure that Federal employees are compensated for this period of furlough, employees are understandably concerned about the work interruption and the possible loss of income due to the furlough. Many questions have arisen about eligibility and application procedures for unemployment insurance (UI) available to Federal employees.

The following Q's and A's provide basic information about this process to Federal employees. Federal employees are reminded that if they are paid retroactively for the furlough period, they will be required to pay back any unemployment insurance benefits received.

**Are Federal employees eligible for UI during a shutdown of Federal agency operations?**

Federal employees are eligible to collect UI during periods that they are out of work under a special program called Unemployment Compensation for Federal Employees (UCFE). This program is operated by individual states, and eligibility and benefit amounts are determined under the law of the State in which the individual works, (last official duty station).

If a furlough as is lengthy and uncompensated, the conditions for UI eligibility exist. Should the period of the furlough be compensated, most State laws would disqualify individuals from UI eligibility, since they would in effect receive income for the time they were furloughed. In addition, many States require a week of uncompensated unemployment before benefits become payable. These two factors may mitigate against the receipt of UCFE benefits by furloughed Federal employees.

Again, if there were any receipt of UI benefits, and the furlough is compensated, the UI benefit amount would have to be paid back.

**How do Federal employees file a claim during a shutdown?**

o In the Washington, D.C. Metropolitan Area

- The States of Maryland and Virginia, and the District of Columbia have developed special mail-in claims filing packages specifically designed for furloughed Federal employees. Some Federal agencies provided these mail-in claims forms to employees prior to their furlough.
- Other Federal agencies are mailing the appropriate mail-in claims forms to employees, and these forms should be received by employees by Monday, November 20. If Federal employees have not received mail-in claims forms, they may visit a UI local office in the District of Columbia, Maryland or Virginia to obtain a mail-in claim form. Employees should obtain the mail-in claim form for the State in which their last official duty station is located.
- Copies of the mail-in claims forms for D.C., Maryland, and Virginia are in all Washington, D.C. metropolitan local offices.

Outside the Washington D.C. Metropolitan Area

- Outside the D.C. area, many states have also developed special mail-in claims forms specifically designed for furlough situations.
- If Federal employees have not received claims filing instructions, they should contact the Employment Security Department in the State in which their last official duty station is located.
- The telephone number of this agency is in the State Government section of the local telephone book, and employees can locate the telephone number under the term "Unemployment Insurance".
- Many State Employment Security Department's will provide information in the local media about special claims filing instructions for federal employees who work in their state.

What document/information should I provide when filing a claim?

- o State Employment Security Agency claims filing instructions contain that information.
- o Federal employees may be asked to provide copies of any wage and separation information concerning their Federal employment, such as a W-2, SF-8, SF-50, or their last earnings and leave statement.

## U.S. Department of Justice



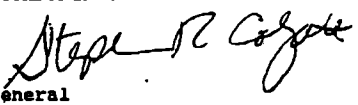
Washington, D.C. 20530

November 9, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

SUBJECT: Potential Furlough Due to Lapse in Appropriations

We have just received the attached guidance from the Director of the Office of Management and Budget (OMB) concerning the potential for a lapse in appropriations effective at midnight on Monday, November 13, 1995.

Consistent with that guidance, you should, to the extent that time is available today, review your shutdown plans and advise employees to report to work on Monday. The OMB guidance indicates the steps that will be taken on Monday and, in the event of an appropriations lapse, on Tuesday.

I have scheduled a meeting with your Executive Officers for Monday, November 13, at 11 a.m. in the Andretta Room in the Main Justice Building. They should note that the time for the meeting has been advanced.

We will discuss this information in more detail at Monday's meeting.

cc: Executive Officers



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503  
November 9, 1995

THE DIRECTOR

M-96-01

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS  
AND AGENCIES

FROM: Alice M. Rivlin *AMR*  
Director

SUBJECT: Planning For Agency Operations

This memorandum is designed to help you plan your agency's activities for next week, in light of recent developments on fiscal 1996 appropriations.

The current Continuing Resolution (CR) expires at midnight on Monday, November 13, 1995. At this point, only two appropriations bills have been enacted for fiscal 1996. We do not know if Congress will pass a second acceptable CR by Monday that will continue funding for activities that lack appropriations. Because there is a real chance that this may not occur, you should begin planning now, as a contingency matter, as follows:

Today, Thursday, November 9. You should review your shutdown plans and ensure that your employees are properly informed. As noted above, the CR expires at midnight, Monday. Therefore, Monday, November 13th will be a normal workday for the Federal Government. You should advise employees to report for work on Monday.

Monday, November 13: All employees should report for work. We will advise you of further developments, including whether a CR will likely be enacted. If not, you should prepare to implement your shutdown plan on Tuesday.

Tuesday, November 14: Regardless of whether a CR has been enacted, all employees should report to work on Tuesday. We will advise you on whether your shutdown plan is to be implemented, as follows.

- Shutdown. If no CR has been enacted or will likely be enacted Tuesday, we will issue instructions initiating a phase-down of activities for non-excepted employees. You should complete such phase-down activities for non-excepted personnel, if called for, during the first three hours of the workday.

-- Normal Operations: If a CR will likely be enacted on Tuesday, we will advise agencies to operate in a normal manner.

Attached is a summary of our general guidance on agency operations in the absence of appropriations.

Thank you for your cooperation in these difficult circumstances. We will keep in close touch with you as developments unfold.

Attachment

**General Guidance on Agency  
Operations in the Absence of Appropriations**

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981), requires all agencies to maintain plans to deal with an appropriations hiatus. If a shutdown occurs, we assume each agency will be operating under its shutdown plan as approved by OMB in September. As a reminder, the Attorney General's opinion dated January 16, 1981, updated by the opinion of the Office of Legal Counsel dated August 16, 1995, remains in effect. In general:

- o Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property.
- o Agencies may not permit voluntary performance of non-excepted services; and
- o Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and this memorandum, and pursuant to normal agency processes for the resolution of issues of law and policy).

Please address any questions to your OMB budget examiner(s), or to OMB General Counsel Robert Damus (395-5044), or Associate General Counsel for Budget Rosalyn Rettman (395-4778).



U. S. Department of Justice

Washington, D.C. 20530

NOV 13 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration*Stephen R. Colgate*

SUBJECT:

Possibility of Furlough

As you are probably aware, the continuing resolution to fund government operations expires at midnight on November 13, 1995. It is possible that another continuing resolution will be approved to cover Department of Justice operations until a FY 96 appropriation can be approved. Based on recent media accounts, it is also possible that the budgetary and policy differences between the Congress and the President may not be promptly resolved and could result in a lapse in appropriations.

All employees will be expected to report to work as usual on Tuesday, November 14, 1995, to engage in orderly shutdown activities. We will keep you informed of the status of the Department's funding during this period.

In the event of a shutdown, you will be required to issue official furlough decision notices to non-excepted employees and to release them after 3 hours of shutdown activity on Tuesday. Only those employees who, as identified in your approved Contingency Plan, perform "emergency" functions (i.e., whose duties involve the safety of human life or the protection of property) or whose salaries are paid from other than FY 96 appropriations will be permitted to work.

The Department of Labor recently issued new guidelines for unemployment insurance filing procedures in the Washington, D.C. metropolitan area. They are being forwarded to Bureau Personnel Officers under separate cover and should be followed in the event of a shutdown of Federal agencies due to either a lack of an appropriation/continuing resolution or in the event of a failure to increase the debt ceiling.

Late in FY 95, materials were provided for your information and use in planning and implementing a furlough. You should use this material to notify non-excepted employees of the possibility of

## Hheads of Department Components

2

furlough. We will issue updates and additions to this information as conditions change.

You should also begin your internal planning for the issuance of furlough notices to non-excepted employees. To assist in that process, you were previously provided with the following information:

- A delegation from the Deputy Attorney General giving you the authority to issue furlough decision notices to attorneys, members of the Senior Executive Service, and incumbents of senior-level and scientific or professional positions.
- A draft furlough decision notice for issuance to employees. You must also ensure that furlough decision notices are issued to employees on detail. These employees are subject to furlough in the same manner as employees who are not on detail. Employees should be instructed to listen to the news media for instructions about their return.
- Merit Systems Protection Board (MSPB) form and MSPB regulations, which include the addresses of MSPB regional offices, where employees may file appeals. The appeal form may be given to employees with the furlough decision letter or when they return to work. Employees will also be able to obtain a copy of the appeal form from the Furlough Information Hotline.
- A Department Security Officer memorandum concerning the securing of sensitive and classified information during furlough.

The draft materials were provided electronically to components on the EAGLE and AMICUS networks. Three and 1/2" diskettes containing copies of the materials in WordPerfect 5.1 format were also provided for components who are not on network.

If furloughs do take place, the Department will activate on November 14, 1995 a Furlough Information Hotline to provide employees current information. The hotline numbers will be (202) 514-1087 for Washington, D.C. Metropolitan Area callers and 1-800-521-6079 for long distance callers.

We will continue to apprise you of developments concerning the shutdown of government operations, and provide updated guidance as it becomes available. Questions concerning this matter may be referred to Vivian Jarcho, the Personnel Staff's Assistant Director for Policy, on (202) 514-6397, or in the event of furlough, John Cahill of the Personnel Staff's Policy Group on (202) 514-6778.



## U. S. Department of Justice

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Washington, D. C. 20530

## MEMORANDUM FOR NON-EXCEPTED EMPLOYEES

FROM: (Head of Component)

SUBJECT: FURLOUGH DECISION NOTICE

This is to inform you that neither an annual appropriation nor a continuing resolution has been enacted to provide funds for the regular operation of the Department of Justice. Consequently, the Department of Justice is without funds as of midnight, November 13, 1995.

Under the Antideficiency Act, no obligations may be incurred in the absence of appropriations except for the protection of human life or property, the orderly suspension of operations, or as otherwise authorized by law. Because your services are no longer needed for orderly suspension of operations and you are not engaged in excepted or emergency activities, you are being placed in a furlough status. The furlough status is effective November 14, 1995, or upon completion of shutdown activities which will occur no later than November 14, 1995. The furlough is not expected to exceed 22 workdays. You should listen to public broadcasts and when you hear that a continuing resolution or a FY 1996 appropriation for the Department of Justice has been approved, you will be expected to report to work on your next regular duty day.

This action is being taken because of a sudden emergency... requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 752.404 (d)(2).

If employees are being retained in your competitive level, they are required for orderly suspension of Department operations or they are performing excepted activities or shutdown activities as defined by the Office of Management and Budget.

During the furlough period, you will be in a nonpay, nonduty status. Also during the furlough, you will not be permitted to

serve as an unpaid volunteer, but must remain away from your workplace unless or until recalled. Since leave cannot be granted on a nonworkday, all annual, sick, court leave, or leave for bone marrow or organ donation is cancelled effective November 14, 1995, through the duration of the furlough period. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty. Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. Senior Executive Service career appointees adversely affected may also appeal. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. A copy of the MSPB regulations and appeal form and the addresses of the MSPB Regional Offices having jurisdiction over appeals will be available in your servicing personnel office once the furlough ceases.

The Department has established a Hotline to provide employees with furlough information. Callers from the metropolitan area should dial (202) 514-1087. For long distance callers, the number is 1-800-521-6079. Information which describes the effects of a nonpay status (due to furlough) on employee benefits and other matters is attached.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement or may appeal to the MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact your union representative.

Attachment



**EFFECTS OF FURLOUGH ON EMPLOYEE BENEFITS  
AND OTHER IMPORTANT MATTERS**

**EMPLOYEE BENEFITS**

**Health Benefits** - Enrollments in the Federal Employees' Health Benefits Program (FEHB) will continue for no more than 365 days in a nonpay status. The government's contribution will continue while employees are in a nonpay status. Employees premiums will accumulate during the furlough and contributions will be withheld from their pay upon return to duty.

**Cancelling FEHB Coverage While on Furlough** - Employees are cautioned not to cancel FEHB coverage to avoid payment of premiums while in a nonpay status or reduced-pay status. If cancelled, employees must wait for a FEHB open season to re-enroll. Further, cancellation of FEHB coverage may affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

**Life Insurance** - Enrollments in the Federal Employees' Group Life Insurance Program will continue for 12 consecutive months in a nonpay status without cost to the employee or the agency.

**Retirement** - Retirement coverage continues at no cost to employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay. The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.

**Thrift Savings Plan** - When an employee is in a nonpay status for an entire pay period, Thrift Savings Plan (TSP) employee and agency contributions are not made for that pay period. This is true even if the employee is receiving benefits from the Office of Workers' Compensation Programs. TSP contributions, including the agency automatic (1%) contributions made to the accounts of employees covered by the Federal Employees' Retirement System are based upon the basic pay the employee earned for the pay period. Because the employee's basic pay is zero, TSP contributions are zero. Employees cannot make up the missed TSP contributions when he or she returns to pay status.

If an employee receives some basic pay for working a portion of a pay period, the agency automatic (1%) contribution for the pay period is determined using the basic pay the employee earned for the pay period. The employee's contribution, based on a percentage of pay, is also determined by using the basic pay earned for the pay period. For contributions based on a whole dollar amount, the employee contribution is reduced to 10 percent of the employee's basic pay (if FERS) or 5 percent (if CSRS) if the elected amount exceeds the 10 or 5 percent limit. If the elected whole dollar amount exceeds the employee's net pay for the pay period, no employee contribution is made for the pay period.

**Thrift Savings Plan Loans** - Because under the TSP loan program, loan payments may only be made through payroll allotments, employees in nonpay status are not eligible to receive TSP loans until they return to pay status. If an employee who has a TSP loan misses payments for less than 90 days, the loan payment schedule will be extended. However, the loan must be repaid in full by the fifth anniversary of the loan issuance date for education, medical, or financial hardship loans and by the eighteenth anniversary of the loan issuance date for residential loans.

If an employee misses payment for 90 or more days and (a) the employee is in an approved nonpay status, e.g., furlough; and (b) the TSP has been so informed; and (c) the employee returns to pay status so that loan payments

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resume within one year, the employee must reamortize the loan when he or she returns to pay status. If the employee fails to reamortize the loan, the loan must be prepaid in full. If the loan is not reamortized or prepaid in full, a taxable distribution will be declared.

In situations similar to that described above, except the TSP is not informed of the nonpay status and the employee does not return to pay status, the employee must prepay the loan in full at the end of the first year of the nonpay status or be subject to a taxable distribution of the unpaid loan principal and any accrued interest. The Department has notified TSP of those employees who have loans and are furloughed effective October 1, 1995.

#### **PAY ISSUES**

**Holiday Pay During a Furlough** - Employees are entitled to be paid for a holiday, if they are furloughed on the last workday before a holiday or the first workday after a holiday. This is based on the presumption that, but for the holiday, the employee would have worked. However, employees are not entitled to be paid for a holiday if a furlough includes both the last workday before the holiday and the first workday after the holiday. In this situation, there is no longer a presumption that, but for the holiday, the employee would have worked on that day.

**Continuation of Pay** - Employees who are receiving continuation of pay (COP) due to job-related injuries are maintained on COP status during periods of furlough.

**Senior Executive Service Performance Awards** - The payment of performance awards to Senior Executive Service employees may be delayed until after the furlough when funds are available.

**Payment for Court Services** - Employees who serve as witnesses or jurors on furlough days will retain all monies received from the court.

**Workers' Compensation** - Workers' compensation benefits will continue through the furlough period.

**Deductions from Pay** - When an employee's gross pay is insufficient to permit all deductions to be made, deductions are made in accordance with the order of withholding precedence established by the General Accounting Office. The order of precedence is as follows: (1) civil service retirement and Medicare; FERS (basic and Old Age Survivors and Disability Insurance (OASDI), or OASDI for those employees not covered by a Federal retirement system; (2) Federal income taxes; (3) health insurance premiums; (4) basic life insurance; (5) State income taxes; (6) city income or employment taxes; (7) indebtedness to the United States; (8) garnishment for alimony and child support payments; (9) court ordered bankruptcy payments under Chapter 13 of Title 11, United States Code; (10) optional life insurance -- additional first, standard second, and family third; (11) other voluntary repayments of indebtedness to the United States in the order specified by the employee; and (12) all other voluntary deductions, starting with the Thrift Savings Plan or repayment of loans from that plan for any employee (FERS or not) contributing to the thrift plan, and then allotments and assignments, which shall be made in the order determined by the paying agency.

**Within-Grade Step Increases** - Within-grade step increases are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status due to furlough for lack of funds, may affect the timing of such increases. The amount of workweeks in a nonpay status that is

creditable towards completion of the required waiting period for within-grade step increases is as follows: two workweeks for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10. For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek in a nonpay status is creditable service for advancement to step 2; three weeks for advancement to step 3; and four weeks for advancement to steps 4 and 5. Thus, if a General Schedule employee in steps 1, 2, or 3 of the grade is furloughed for more than two workweeks during the waiting period, his or her within-grade increase would be delayed by at least a full pay period.

**Unemployment Compensation** - Federal employees are covered for unemployment insurance (UI) purposes under the Unemployment Compensation for Federal Employees (UCFE) program. The UCFE program is administered by the individual States, and UCFE benefits are generally determined and paid under the UI law of the State which the Federal employee worked.

State UI laws provide for the payment of partial weekly amounts when individuals are employed less than full-time during a week. State UI laws vary as to the number of hours and/or days the individual must be in non-employment status during a week in order to be eligible for a partial weekly payment, but in most cases, an individual in furlough status for 1 or 2 days during a week would not be eligible for a partial UCFE payment for that week. Individuals at grade levels of grade 9, step 5, and higher would need to be on furlough status for at least 4 days per week in order to be eligible to receive a partial UCFE payment for the week. In addition, most State UI laws provide that the first week of UI and (UCFE) eligibility is a non-paid "waiting week" and therefore, UCFE payments would not actually begin until the second week of eligibility in States with a "waiting week."

Individuals normally file UCFE claims at the State agency local office nearest to where they live or work. The address and telephone number of these local offices are listed under the State government sector in the local telephone directory.

#### **LEAVE ISSUES**

**Leave Requests During Furlough** - The necessity to furlough employees due to lack of work or funds supersedes leave rights. Thus, all annual, sick, court leave, or leave for bone marrow or organ donation is cancelled during the furlough period. However, military leave must be charged on a nonworkday when the nonworkday occurs wholly within the period of military leave for military duty.

**Leave Without Pay During Furlough** - Employees who are on approved leave without pay (LWOP) during the furlough period may be continued in a LWOP status if there is no expectation that the employees may return to duty on the proposed furlough days. The LWOP may be terminated and employees placed in a furlough status. However, such action is unnecessary since there is no work or funds involved.

**Use or Lose Annual Leave** - Employees who have properly scheduled "use or lose" annual leave and are unable to use some or all of the scheduled leave because of a furlough should make every effort to reschedule the "use or lose" annual leave for use before the end of the current leave year. However, if this is not possible, authority may be granted to restore the leave after the beginning of the new leave due to an exigency of public business, i.e., the need to furlough employees because of lack of work or funds.

**Family and Medical Leave** - Furlough days cannot be counted towards the 12-week entitlement to leave under the Family and Medical Leave Act (FMLA). Employees cannot take leave under the FMLA on days that coincide with the dates of furlough.

**EMPLOYMENT AND INJURY WHILE ON FURLOUGH**

**Employment during Furlough** - The standards of conduct for executive branch employees state in the definition of an employee that status as an employee is unaffected by pay or leave status. This means that Federal employees will still be considered to be employees when on furlough and thus subject to all of the rules on conduct.

The standards prohibit an employee from having outside employment that conflicts with his or her official duties. Employees remain subject to this requirement during furlough. Thus, an employee may not, now or during a furlough, work for an entity he can affect in carrying out his official responsibilities. Further, employees subject to any approval requirement for engaging in outside employment will remain subject to that requirement during furlough.

The only Department-wide requirement for seeking approval for outside employment goes to the practice of law. If an employee would like to practice law for compensation, now or during a furlough, he must obtain approval from the Deputy Attorney General. To engage in unpaid practice of law, he needs only to obtain approval from his component head. Employees of Bureaus may be required to seek approval before engaging in other employment in addition to the practice of law. Such employees should consult their Deputy Designated Agency Ethics Official for specific requirements. Generally, employees of the Offices, Boards and Divisions have no other approval requirement. For example, an OBD employee may, now and during a furlough, work for a fast food restaurant or a supermarket, as long as there is no conflict with his government duties, without obtaining approval. All employees remain subject to other restrictions on outside activities including restrictions on partisan political activities.

**Volunteering to Perform Your Job While on Furlough** - Agencies are not permitted to accept voluntary services of an individual unless authorized by law. Thus, an employee may not volunteer to do his or her job on a nonpay basis during a furlough period.

**Work on a Furlough Day in Exchange for Time Off for Religious Observances** - Employees may not work on a furlough day in exchange for taking a day off at another time for religious observances. The statute that permits employees to take compensatory time off for religious observances does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

**Injury While on Furlough** - Employees are not eligible for workers' compensation while on furlough. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough are not in a duty status for this purpose.

**SERVICE CREDIT**

**Time-in-Grade** - Time in a nonpay status is creditable service for meeting time-in-grade requirements.

**Completion of Probation** - An aggregate of 22 workdays in a nonpay status is creditable service towards completing a probationary period.

**Retirement** - An aggregate nonpay status of six months in any calendar year is creditable service. Thus, there is no effect on an employee's high-3 average unless the furlough causes the employee to be in a nonpay status for more than six months during the calendar year.

**Career Tenure** - The first 30 calendar days of each nonpay period is creditable service towards meeting the service requirements for career tenure.

**Severance Pay** - Nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR

§50.705. However, for purposes of determining service creditable towards the computation of an employee's severance pay fund under 5 U.S.C. §§95(c)(1) and 5 CFR §50.707-708, no more than six months of nonpay status time per calendar year is creditable service.

**Military Duty or Workers' Compensation** - Nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

**Annual and Sick Leave** - When an employee accumulates 80 hours of nonpay status, his or her annual and sick leave credits are reduced by an amount equal to the amount of leave the employee earns during that pay period. For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of six months nonpay status in a calendar year.

#### EMPLOYEE SERVICES

**Department of Justice Recreation Association** - The Department of Justice Recreation Association facility located in the Main Justice building will be open during the furlough period.

**DOJ Cafeteria** - The cafeteria in the Main Justice Building will be open during the furlough period.

**DOJ Federal Credit Union** - The DOJ Federal Credit Union (DOJFCU), located in the Main Justice Building, will be open during the furlough period. The DOJFCU has informed the Department that they are developing a series of plans to help ease the financial burden on employees being placed in a nonpay status. The plans include special loan programs to its members, the elimination of certain fees and penalties on savings and loan programs will be eliminated; and extended service hours to provide financial counseling. Additional information may be obtained directly from DOJFCU by calling (202) 842-3200 (local calls) or 1-800-842-3200 (long distance callers).

**Health Units** - The Health Unit will be open in the Main Justice Building if the building is open.

**Justice Occupational Health Organization** - If employees are furloughed the Justice Fitness Center will be closed.

**Travel Management Center** - Beginning October 1, 1995, Omega World Travel (OWT) will replace Carlson-Wagonlit Travel as the Department's nationwide Travel Management Center. Omega's main reservation/ticketing location will be on the first floor of the Bicentennial Building at 600 E Street, N.W. A small branch office for ticket pick up will be located in the Main Justice Building, at the same location used by Carlson. These two sites are for employees of the Offices, Boards, and Divisions, and the Immigration and Naturalization Service. A reservation center will be located at 320 First Street, N.W. for employees of the Bureau of Prisons. A reservation center for employees of the Drug Enforcement Administration and United States Marshals Service will be located at 700 Army Navy Drive, Arlington, Virginia. Omega will be open during the furlough period.

Employees may call the following telephone numbers for services:

#### Offices, Boards, and Divisions/Immigration Service

Regular hours (7:30 a.m. - 5:30 p.m.) (202) 393-8240  
Regular hours - Toll Free 1-800-366-3493  
After hours - Toll Free 1-800 685-6342

#### Bureau of Prisons

Regular hours (202) 393-8266

#### Drug Enforcement Administration/U.S. Marshals Service

Regular hours (703) 412-2714

## U.S. Department of Justice



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Washington, D.C. 20530

November 14, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

SUBJECT: Employees on Detail During the Furlough

*Enc*

The Office of Legal Counsel has advised that the determination whether an employee who is detailed to another agency (including an agency in another branch of the government) should be made by the receiving agency. That is, if a Department of Justice employee is detailed to the Treasury Department, it is the Treasury Department which determines whether the duties being performed by the detailee exempt him or her from the furlough.

cc: Executive Officers

## U.S. Department of Justice



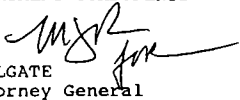
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Washington, D.C. 20530

November 14, 1995

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM:

  
STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

SUBJECT:

Implementation of Contingency Plans

In view of the fact that neither a continuing resolution nor an annual appropriation for the Department of Justice was enacted as of midnight, November 13, 1995, you should proceed with the implementation of your contingency plan and the release of all "non-exempt" employees after three hours of work today.

## U.S. Department of Justice



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Washington, D.C. 20530

November 17, 1995

## MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: STEPHEN R. COLGATE  
Assistant Attorney General  
for Administration

SUBJECT: Guidance for Presidential Appointees

A handwritten signature in cursive script, reading "Stephen R. Colgate", written in dark ink.

We have received the attached memorandum from the Deputy Director of the Office of Management and Budget (OMB) which provides guidance concerning the activities in which Presidential ("PAS") appointees may engage during the furlough period. You should review the guidance and ensure that you and appropriate members of your staffs are complying with OMB's direction.

There is also attached a list of examples of the effects of the furlough which OMB has assembled.

Attachments

cc: Executive and Administrative Officers



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR  
FOR MANAGEMENT

November 16, 1995

MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM: John A. Koskinen *JK*  
RE: Guidance for Activities of Political Appointees and Other Officials

Enclosed is guidance to political appointees on activities during periods of shutdown. Also included is a discussion regarding appearances by political appointees.

These materials were distributed at the cabinet meeting this evening and I would appreciate your ensuring that all appropriate officials receive copies.

Also enclosed is a set of examples of the impact of reduced government services. We are continuing to expand this document.

I will be organizing a conference call for tomorrow at 2:00 p.m. to discuss emerging issues surrounding the shutdown.

cc:

Alice M. Rivlin  
Larry Haas  
Kitty Higgins  
CFO Council  
PCIE / ECIE  
Agency Chiefs of Staff  
Agency Shutdown Contacts

**Guidance to PAS and Other Officials  
on Activities During Period of Shutdown**

**I. General Guidance**

- o A PAS official needs to be able to carry out his or her "chain of command" constitutional responsibilities with respect to those activities of the agency that continue during a shutdown. An agency's "shutdown activities" consist of --
  - those activities for which there exist an appropriation (e.g., a permanent appropriation),
  - certain constitutional activities,
  - "excepted" protection of life and property activities, and
  - activities that fall within exceptions expressly authorized by law or that are necessarily implied by other authorities.
- o Because the obligation to pay PAS officials arises from their status, and without regard to whether they perform any services, a PAS official is not limited to performing "shutdown activities," but may also perform non-"shutdown activities."
- o A PAS official needs to receive that level of staff support which is necessary for the PAS official to carry out his or her constitutional "chain of command" responsibilities with respect to the agency's "shutdown activities" (i.e., the PAS official's "shutdown responsibilities").
- o Thus, a PAS official needs to identify which staff are necessary for the PAS official to carry out his or her "shutdown responsibilities" (i.e., the PAS official's "shutdown staff").
  - An employee may not be included in the PAS official's "shutdown staff" unless it is reasonably anticipated that the vast majority of the employee's workday will be devoted to supporting the PAS official with regard to "shutdown activities." This is the same principle that applies, for example, to those employees who are on-board in order for the agency to perform constitutional or "excepted" functions -- it must be reasonably anticipated that the vast majority of each employee's workday will be devoted to performing those functions.

- Thus, when an employee needs to be on-board because the vast majority of his or her workday will be devoted to "shutdown activities" (including supporting a PAS official in performing the official's "shutdown responsibilities"), the employee may devote incidental periods of the workday to non-"shutdown activities" (i.e., assuming no marginal obligations are incurred). Otherwise, the government would be paying for a full workday, but getting only part of a workday. However, although incidental non-"shutdown activities" may be performed, the employee's first priority must be the performance of "shutdown activities."

## II. PAS Officials and Travel

- o Out of Town.
- o A PAS official may travel out-of-town to carry out that official's "shutdown responsibilities."
- o To the extent that additional employees are needed to assist the PAS official in carrying out his or her "shutdown responsibilities," the PAS official may bring along employees who would otherwise be on-board because the vast majority of their workday will be devoted to "shutdown activities." While out-of-town, the vast majority of the employees' workday must be devoted to "shutdown activities" (if not, then those employees should be back in the office or on furlough).
- o Because out-of-town travel involves an agency incurring marginal obligations, a PAS official may not travel out-of-town to carry out non-"shutdown activities" (just as an "excepted" employee may not travel out-of-town to carry out non-"shutdown activities").
- o In Town.
- o A PAS official may travel in-town to carry out that official's "shutdown responsibilities."
- o To the extent that additional employees are needed to assist the PAS official in carrying out his or her "shutdown responsibilities," the PAS official may bring along employees who would otherwise be on-board because the vast majority of their workday will be devoted to "shutdown activities."
- o PAS official may travel in-town to carry out non-"shutdown activities" so long as no marginal obligations are incurred (e.g., no cab fares).

- o To the extent that additional employees are needed to assist the PAS official in carrying out a non-"shutdown activity," the PAS official may bring along employees who would otherwise be on-board because the vast majority of their workday will be devoted to "shutdown activities." Thus, the duration of the non-"shutdown activity" must be limited to an incidental portion of those employees' time (if not, then those employees should be back in the office or on furlough). In addition, although incidental non-"shutdown activities" may be performed, the employee's first priority must be the performance of "shutdown activities."

### III. Testimony by PAS and Other Employees

#### PAS

- o PAS may testify whether or not the testimony would otherwise fall within their responsibilities during shutdown.
- o Support persons may not assist the PAS unless:
  - the PAS is testifying under subpoena,
  - activity is independently justified as an excepted activity (i.e. assisting the PAS in this regard is not an independent "excepted activity" by itself), or
  - the assistance is undertaken during any brief, incidental and unplanned periods during the workday when excepted activities do not need to be performed.

#### Other Employees

- o Non PAS employees who are otherwise excepted may not testify (absent subpoena) unless the testimony is covered under one of the standard excepted activity categories -- that is, such testimony by itself is not an independent basis for a shutdown exception.
- o Employees otherwise on furlough may not be called back to duty simply to testify (absent subpoena) since testimony is not an independent basis for a shutdown exception.

**Appearances of Political Appointees**

As discussed in the guidance provided on travel and attendance at Congressional hearings, PAS officials should ensure that other activities undertaken are consistent with the fact that much of the government has been shutdown. Public appearances that address the impact of the shutdown on government employees or on other affected publics are clearly appropriate. Similarly, activities that are integral to the management of the agency or the protection of employee morale during this period are encouraged. However, managers should examine carefully other appearances and activities that under normal circumstances would be appropriate but under current circumstances might be questionable. For example, some managers may determine that participation in some types of routine, narrowly focused public events or forums would be inappropriate under current circumstances.

**EXAMPLES OF REDUCED GOVERNMENT SERVICES**

- A. No new OASDI and SSI benefit applications are being processed.
  - 1. *On an average day, SSA receives 28,000 applications for retirement, survivors, or disability benefits for OASDI and SSI. In addition, it handles 200,000 calls through its 800 telephone service, which is closed during the shutdown.*
  - 2. *On an average day, SSA receives 60,000 requests for new or replacement Social Security cards and receives 75,000 visits to local field offices.*
- B. No new applications for Veterans benefits are being processed.
  - 1. *On an average day, VA processes 1,613 new claims for compensation and pension benefits and 8,074 claims actions from existing beneficiaries for adjustments to their benefit amount.*
  - 2. *On an average day, VA processes 883 original claims for Montgomery GI Bill and other veterans education benefits and 4,570 claims for adjustments from current beneficiaries.*
  - 3. *If an Appropriation is not enacted by November 21, over 3.3 million veterans and survivors will not receive their benefit checks.*
- C. No new applications for Medicare are being processed.
  - 1. *On an average day, HHS processes 10,000 new Medicare beneficiaries.*
- D. Head Start services are threatened.
  - 1. *Within several days, 60,000 Head Start children will lose services and 11,000 Head Start staff will be without funding.*
- E. "Deadbeat Dads" are getting a holiday through the shutdown.
  - 1. *The Federal Parent Locator Service to which on average, 20,000 cases per day are referred is closed.*

**F. Vital legal and law enforcement functions are shutdown or delayed.**

1. FBI training of agents and state and local law enforcement officers has ceased.
2. The FBI's liaison function with state, local, and international law enforcement has been canceled.
3. Federal law provides that only the Attorney General may authorize a Federal Prosecutor to seek the imposition of the death penalty. Processing of these requests -- in violent crime and narcotics cases -- will be substantially delayed.
4. All civil litigation has been postponed to the extent possible. This exposes the United States to significant liability and means that lawsuits which could be filed on behalf of the government against, for example, elderly fraud operators, will not be filed. The effects will be felt by the taxpayer in general and by victims in particular.
5. Investigations of employment discrimination on the basis of race, sex, religion, or national origin are suspended.
6. Processing of prison grant applications is slowed down. Appropriated funds to assist states in constructing and bringing on line new prison facilities is delayed.
7. Collection activities by Justice's Civil Division have ceased. The cessation of collection activities means that the Treasury receives less income and thus the deficit actually grows. In addition, individuals who owe the government money can withhold payment without any particular penalty.

**G. FHA mortgages are halted.**

1. *On an average day*, the Federal Housing Administration processes 2500 home purchase loans and refinancings totaling \$200 million worth of mortgage loans for moderate-and low-income working families nationwide. The shutdown has halted these activities delaying home ownership for those who have played by the rules.

**H. Reduced funding to public housing authorities.**

1. *On an average day*, HUD provides \$25 million in operating subsidies and modernization funds to the 3400 local housing agencies who in turn provide public housing and services to 1.4 million low-income households. Shutoff of this funding will potentially prevent public housing authorities from paying utilities, providing basic maintenance needs, or paying staff.

- I. **Reduced funding for homeless services.**
  - 1. **A one-day shutdown of HUD's Line of Credit Control System could prevent the delivery of essential housing and emergency services provided to at least 32,000 homeless persons.**
- J. **Many protections for American workers are suspended due to the shutdown of much of the Labor Department. For each day of the shutdown:**
  - 1. **95 percent of workplace safety complaints are going unanswered.**
  - 2. **170 workplace safety and health inspections are not being performed.**
  - 3. **190 worker complaints of minimum wage and overtime violations would remain unresolved.**
  - 4. **500 requests for information and assistance from pensioners participating in plans with \$3 trillion in assets are going unanswered.**
- K. **National Park Services facilities are closed.**
  - 1. ***On an average day, 726,000 people visit National Park Services facilities.***
  - 2. ***On an average day, 55,000 people visit National Park Services facilities in the National Capital Region, such as the Washington Monument, Ford's Theater, the White House, and Great Falls Park.***
- L. **The Smithsonian museums, Kennedy Center, National Zoo, and National Gallery of Art are closed.**
  - 1. ***On an average day, 80,000 people visit the Smithsonian Museums on the Mall and the National Zoo.***
  - 2. ***On an average day, 12,400 people visit the National Gallery of Art.***
  - 3. ***On an average day, 6,900 people visit the JFK Center for Performing Arts. (This does not include individuals who pay to attend performances, for which the Kennedy Center will continue to be open.)***
- M. **Applications for passports are not being processed and new passports are not being issued.**

1. *On an average day*, the State Department receives 23,000 applications for passports.
  2. *On an average day*, the State Department issues 22,000 passports.
- N. No recruits to join the armed forces are being processed or inducted.
1. *On an average day*, over 700 members of the armed forces are enlisted.
- O. The Federal Employment Information System is closed.
1. *On an average day*, 24,000 Americans will be denied access to job information including veterans transitioning from active duty to civilian life, disabled veterans seeking information about special hiring programs, college students seeking careers in public service, and displaced federal employees seeking outplacement.
- P. Hiring for Law Enforcement Positions has been interrupted.
1. Hiring of up to 400 new Border Patrol Agents has already been delayed by the cancellation of two recruitment cycles.
- Q. Assistance to Small Businesses has been interrupted.
1. *On an average day*, over 260 small business will not receive SBA guaranteed financing totaling over \$40 million of loans.
  2. *On an average day*, over 90 small business will be prevented from bidding on government contracts because they will be unable to receive SBA guaranteed bid bonds which allow them to bid on those contracts.
  3. *On an average day*, 1200 small business owners will not receive SBA-sponsored training and counseling normally available to them.
- R. American exporting businesses are being disadvantaged during a shutdown.
1. *On an average day*, over 30 export licenses with a value of \$30.5 million that would otherwise have been approved by the Bureau of Export Administration are not being acted upon.
  2. *On an average day*, over 2500 telephone calls and faxes from U.S. businesses seeking export advice, information and counseling are not being responded to by the Bureau of Export Administration or the International Trade Administration due to the shutdown.



U. S. Department of Justice

Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D. C. 20530

November 16, 1995

**MEMORANDUM FOR JANET RENO**  
**ATTORNEY GENERAL**
From: Walter Dellinger *WED*

Re: Participation in Congressional Hearings during an Appropriations Lapse

The Department of Justice has been informed that various congressional committees intend to hold hearings at which Department of Justice officials have been requested to testify, during the period in which the Department lacks appropriations to pay for the services of those officials. You have asked under what circumstances Department officials may participate in these hearings.

The Antideficiency Act ("Act") provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). In addition, the Act establishes that "[a]n officer or employee of the United States Government . . . may not accept voluntary services . . . or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. These provisions are enforceable by criminal sanctions and their requirements must be observed. All federal officers and employees must comply with the law, whether they serve in the executive, legislative, or judicial branch. Where the Act applies, it restricts the functions that federal officers and employees may perform during an appropriations lapse to only those functions that are encompassed by one of the exceptions to the Act's general prohibitions. The question thus becomes under what conditions, if any, does participation in congressional hearings constitute an excepted function for employees subject to the Act's restrictions.

Before addressing those exceptions, we note that the Act is not implicated at all by the activities of federal employees for whom no obligation in advance of an appropriation is incurred by employing a particular individual, even when appropriations are currently lacking for that individual. A prominent example is provided by those officers who are appointed by the President with the advice and consent of the Senate. These officers are entitled to their salaries by virtue of the office that they hold and without regard to whether they perform any

services during the period of appropriations lapse. See United States v. Grant, 237 F.2d 511 (7th Cir. 1956). Therefore, no federal officer or employee incurs an obligation in advance of appropriations when these officers perform services; instead, this obligation arises by virtue of their status and cannot be obviated by placing them on furlough status.<sup>1</sup>

Where the Act does not apply, as in cases like these, officers and employees may participate in congressional hearings, although the participation of Senate-confirmed officers is subject to the significant limitation that support persons to whom the Act does apply may not assist those officers unless these activities are independently justified under the Act's exceptions. You have indicated that you do not intend to make available Senate-confirmed officials of the Department to participate in congressional hearings unless they have adequate and thorough support to ensure full preparation. This effectively means that the exceptions of the Act define the limits of the Department's ability to comply with requests for testimony. We turn, therefore, to address the scope of those exceptions.

There are two major exceptions to the Act. First, there is an exception for functions that relate to "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. The Act states that this phrase "does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." *Id.* In the highly unusual event that suspension of the Department's participation in a congressional hearing would imminently threaten the safety of human life or the protection of property, the Department may legally participate in the hearing.

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<sup>1</sup> Similarly, the Act would not forbid a furloughed officer or employee from participating in a congressional hearing if that officer or employee participated in his or her individual capacity. So, for instance, an officer or employee who is nominated for a position that is subject to Senate confirmation may, while on furlough status, participate in his or her own confirmation hearing.

Another analogous situation may arise when a non-Senate confirmed officer or employee reports for work because his or her duties fall within an exception to the Act, but there are intervals during the day when the officer or employee is not engaged in an excepted function. If these intervals are anticipated to be brief, such that the officer or employee could not be dismissed from work and then recalled in time to perform the next excepted function activity, then the employee may remain at work throughout the intervals. During these intervals, officers and employees may perform non-excepted functions, because the need for the officer or employee's availability would justify the Department in keeping the officer or employee in the close vicinity of his or her duty station to await the onset of the excepted function. Consequently, the Department would be obligated to compensate such employees while they are awaiting the excepted function work whether they spend this interval performing the non-excepted function or simply sit idle. During these intervals, then, such officers and employees are akin to Senate-confirmed presidential appointees in that they must be paid for these intervals regardless of whether they perform a non-excepted function, and thus the government incurs no additional obligation by virtue of that work being performed. The non-excepted functions that such officers or employees may perform during these brief intervals between excepted functions include services relating to participation in congressional hearings where participation is not otherwise authorized.

The Act also states that governmental functions that are otherwise authorized to be undertaken despite a lack of appropriations may continue during an appropriations lapse. See 31 U.S.C. § 1341(a)(1)(B); id. § 1342. In the context of the Department's participation in congressional hearings, there are two types of authority that satisfy this "otherwise authorized" exception: express authorization and necessarily implied authorization. See Authority for the Continuance of Government Functions during a Temporary Lapse in Appropriations, 5 Op. O.L.C. 1, 3-5 (1981).

Officers and employees of the Justice Department may participate in congressional hearings that take place during a lapse in appropriations if there is express legal authority to participate despite a lack of appropriations, or an express requirement to do so. We are not aware of any statute that grants the officers and employees of this Department such authority in the case of general requests for congressional testimony. Express authority would exist, however, if Congress or a committee were to issue a subpoena requiring the Department or specific officials to participate in a hearing during an appropriations lapse. Departmental policies with respect to responsibilities to the judicial system provide a precedent: it has long been the Department's position that, during an appropriations lapse, attorneys representing the government are to comply with a court order that they continue with litigation even though the litigation does not fall within an exception to the Act. See Memorandum for William Tyson, Director, Executive Office for United States Attorneys, from Robert Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, addendum, at 2 (Mar. 24, 1982); see also *Rojas v. United States*, 55 F.3d 61 (2d Cir. 1995) (scheduling order imposes a duty on attorney, nonperformance of which can subject attorney to contempt sanctions under 18 U.S.C. § 401(3)). We would follow the same principles with respect to a congressional order that imposes a legal duty. See 2 U.S.C. §§ 192, 194 (imposing legal duty to comply with a duly issued legislative summons or subpoena).

The Department's officers and employees may also participate in a hearing despite an appropriations lapse if authority for such participation arises by necessary implication from another specific statutory duty or duties. See 5 Op. O.L.C. at 3-5. In the context of congressional hearings, this exception permits the Department to participate where there is express authority or an express and specific appropriation for the hearing itself, and the Department's participation is necessary for the hearing to be effective, even though there is no specific authority or appropriation available for the Department to participate. This exception also operates where there is express authority for a specific Department official to participate -- such as might arise from a subpoena -- but no express authority for support or assistance of the witness. The Department would regard support and assistance to the otherwise authorized participation as being justified by necessary implication. This approach follows from the well-settled practice with respect to Social Security. See 5 Op. O.L.C. at 5 n.7.

We are not aware of any other exceptions to the Act that would permit the Department to participate in congressional hearings during an appropriations lapse. It has from time to time been suggested that the "authorized by law" exception to the Act includes

all activities that derive from or relate to a constitutional power, such as the "legislative power." Such a construction would authorize Congress to continue holding hearings during an appropriations lapse and would allow the Department to participate. Such a construction, however, is impermissible because it would necessarily nullify the Antideficiency Act. The federal government is a government of limited and expressly enumerated powers. Those powers are denominated in the Constitution, and the federal government may only undertake those activities that are constitutionally authorized. See United States v. Lopez, 115 S. Ct. 1624 (1995). Consequently, if all constitutionally authorized functions -- legislative, executive, and judicial -- were excepted, the Act would not apply to any activity of the federal government.

We have also considered whether a decision by Congress to go forward with hearings in which Department officers cannot participate would result in a congressional encroachment upon the President's constitutional authority.<sup>1</sup> We conclude that no encroachment would occur. The Supreme Court has repeatedly pronounced that statutes are to be construed to avoid serious constitutional questions, where such a construction is permissible. See, e.g., Crowell v. Benson, 285 U.S. 22, 62 (1932). Attorney General Civiletti recognized in his 1981 opinion that it would "raise grave constitutional questions" if the Act were to be read to prohibit the President from exercising his constitutional powers. 5 Op. O.L.C. at 6. Construing the Act as covering executive branch participation in congressional hearings generally, however, does not raise grave concerns over impermissible congressional encroachment on the executive's constitutional role.<sup>2</sup> The Constitution grants the President authority to "recommend to [Congress's] consideration such measures as he shall judge necessary and expedient." U.S. Const. art. II, § 2, cl. 2. Congress does not encroach upon this power by refusing to include the participation of the President or his subordinates in a regular congressional hearing, however unwise and counterproductive such a decision might

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<sup>1</sup> We have applied this same analysis in examining the application of the Act to the judicial branch. See Memorandum for William Tyson, Director, Executive Office for United States Attorneys, from Robert Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, at 2 (Mar. 24, 1982); cf. Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995) (striking down congressional encroachment on the judicial branch).

<sup>2</sup> This assertion is made with the exceptions to the Act in mind. We believe that any instances where grave concerns might otherwise be raised would fall within the emergency exception or one of the other exceptions to the Act. We also note that the Act does not raise corresponding encroachment concerns when applied to Congress. Whereas the Attorneys General and the courts appropriately remain vigilant against congressional encroachment, there is no "grave constitutional" obstacle that prevents Congress, through the Act, from deciding to curtail -- or to postpone until appropriations are available -- regular legislative, investigative, or oversight hearings. Moreover, the Act does not prohibit members of Congress by themselves from conducting hearings, because their salaries are paid from permanent appropriations. It is extremely difficult to see how interpreting the Act to preclude Department of Justice officers or employees from participating in those hearings would raise a grave question as to whether Congress has encroached on its own constitutionally-based authority to conduct hearings.

be. So long as the President retains a means of making legislative recommendations, Congress generally is not obligated to grant the executive a platform at its hearings.<sup>4</sup>

The Antideficiency Act places a substantial limit on the functioning of federal officers and employees generally, including officers and employees of the Department of Justice. These limits extend to participation in congressional hearings conducted during a period of lapsed appropriations. During such a period, an officer or employee of the Department of Justice may participate in congressional hearings if he or she is a Senate-confirmed officer, if appropriated funds are available for his or her participation, if he or she is subpoenaed, or if the hearing falls within one of the categories set forth above.

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<sup>4</sup> That said, the decision to exclude the President from the deliberations at crucial moments in the legislative process would be relevant in a presidential decision to veto such a bill.



DEPARTMENT OF VETERANS AFFAIRS  
ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION  
WASHINGTON DC 20420

APR 08 1996

The Honorable John L. Mica  
Chairman, Subcommittee on Civil Service  
House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Mr. Chairman:

This is in further response to your letter of January 18, 1996, with follow-up questions from the Subcommittee's December 6, 1995 hearing, "The Government Shutdown: What's Essential?"

In my letter of February 12, 1996, we provided responses to questions 1, 2, 4, 7, 8 and 10 of your inquiry. Enclosed are responses to questions 5, 6, 11 and 12. Responses to the remaining questions (3 and 9) will be forwarded in approximately 30 days.

Sincerely yours,

A handwritten signature in cursive script, reading "Eugene A. Brickhouse".  
Eugene A. Brickhouse

Enclosure

Follow-up Questions  
 Subcommittee on Civil Service  
 Hearing December 6, 1995  
 "The Government Shutdown: What's Essential?"

**Question 5: Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.**

The following tables provide the estimated payroll and non-payroll costs the Department incurred with the interruption of operations during November and December-January. The payroll costs are salaries paid to employees who were furloughed and the overtime associated with backlog caused by the interruption of operations. The non-payroll costs include lost interest penalties under the auspices of the Cash Management Improvement Act; lost discounts; and postponed travel.

**Estimated Payroll Costs of Furloughed Employees  
 Includes Overtime Used to Reduce Resulting Backlogs**

**Veterans Health Administration (VHA):**

Medical Care/Research	\$68,908,630
MAMOE	\$3,800,000
<b>Subtotal VHA</b>	<b>\$72,708,630</b>

**General Operating Expenses (GOE):**

Veterans Benefits Administration (VBA)	\$43,037,000
Includes overtime to reduce backlog (\$1,386,000)	
General Administration	\$9,065,178
Includes overtime at Austin Finance Ctr (\$62,000)	
<b>Subtotal GOE</b>	<b>\$52,102,178</b>

<b>National Cemetery System:</b>	<b>\$2,119,000</b>
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Includes overtime due to backlog of headstones  
and markers (\$70,000)

<b>Inspector General:</b>	<b>\$1,957,000</b>
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<b>Total Payroll Costs</b>	<b><u>\$128,886,808</u></b>
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**Estimated Non-Payroll Costs****Veterans Health Administration (VHA):**

Pre-paid tuition costs for furloughed employees	\$13,000
Cancellation penalty of field advisory group	\$500
<b>Subtotal VHA</b>	<b>\$13,500</b>

**Veterans Benefits Administration (VBA):**

Overhead fixed costs incurred during shutdown	\$11,613,000
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**Board of Veterans' Appeals:**

Travel for recalled Board members	\$2,000
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**Human Resources and Administration (HRA):**

Pre-paid tuition costs for furloughed employees	\$2,065
Recall EEO investigators in field	\$7,000
<b>Subtotal HRA</b>	<b>\$9,065</b>

**Office of Management:**

Interest Penalties *	\$170,000
Lost Discounts*	\$122,000
Contract Cost - Recall	\$8,300
Contract Deliverable Delay	\$6,000
Travel for recalled staff	\$2,000
<b>Subtotal Office of Management</b>	<b>\$308,300</b>

<b>Total Non-Payroll Costs</b>	<b>\$11,945,865</b>
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\* These costs are borne by various appropriations and are only identified by the Office of Management.

**6. Please indicate the shutdowns' impact on programs funded through trust funds, fees, carry over funds, or other revenues not tied to annual appropriations. Please describe any changes made in implementing these programs during the December-January shutdown.**

**Medical Care Cost Recovery Program.** The Medical Care Cost Recovery Program (MCCR) is a revolving fund with all associated program operation costs provided from funds collected. As such, all MCCR funded employees were determined to be excepted from furlough. Because of this the shutdowns had little impact on the MCCR program.

**Veterans Canteen Service.** The Veterans Canteen Service (VCS) was created by Congress in 1946 to provide articles of merchandise and services essential to the comfort and well being of veterans who receive care and treatment at Department facilities. All expenses associated with the operation of VCS activities (such as salaries, equipment cost, utilities, etc.) are paid for from revenues generated by the sale of goods and services. VCS operates retail stores, food courts, vending programs and service department activities (dry cleaning, photo developing, barber shops, etc.) in every VA medical center in the system. All of the income generated by VCS activities in excess of operating expenses is returned to the VA medical centers with the goal of improving patient care.

The shutdowns had a significant impact on VCS activities. Faced with the prospect of a payless payday, employees in VA medical centers curtailed buying to only essential purchases. Coming as it did, just ten days before Christmas, the second shutdown had an especially negative impact on what is normally a busy selling period in the retail industry. By comparing average daily sales figures for the shutdown period with similar sales information for the three month period preceding the shutdown, it is possible to produce a reasonably accurate estimate of the impact on sales. The average daily sales decline has been calculated to be \$46,500 or a total sales loss of \$697,000 for the fifteen day shutdown.

In response to the shutdown, the VCS implemented a program designed to assist VA employees. When VA employees did not receive a full paycheck in early January, VCS initiated "OPERATION PANTRY." This program was developed to ensure that employees would be able to buy basic grocery items. Canteens were authorized to stock basic grocery items (which are not normally carried), and sell those items to employees in exchange for postdated checks.

**Research and Development.** The Research and Development program in the Veterans Health Administration receives no support from trust funds or fees. Carry over funds from a two-year appropriation were used to maintain medical center research operations for two of the three weeks in the December-January shutdown. After these funds were depleted, medical centers had to furlough research employees exclusive of those designated as "excepted." Excepted employees continued to perform such functions as the protection of government property, care of laboratory animals, and maintenance of cell cultures. The interruption of routine research will extend completion dates for the affected projects in most cases. Research programs funded from extra-VA sources (both federal appropriations and non-federal funds) were not affected by the shutdown.

**Office of Acquisition and Materiel Management (Supply Fund).** The Supply Fund is a revolving fund which VA health care facilities may use to procure medical supplies and equipment on a reimbursable basis. Although Supply Fund employees were not furloughed themselves, the furlough of other staff who were not available to participate in various activities resulted in the following:

- There was a reduction in the number of purchase orders issued electronically.

- The testing and implementation of various automated systems designed to improve the efficiency of procurement activities was delayed.
- There were delays in vendor payments.
- Standardization actions on selected medical products were delayed.
- National blanket purchase agreements impacting Nuclear Medicine, Dental and possibly Bio-Medical Engineering services at VA medical centers may be delayed.
- Supply Fund revenues were reduced due to reduced shipments of x-ray film and fewer requests for computer upgrades, x-ray inspections, etc.

**Insurance and Loan Guaranty Programs.** Initially, employees who process claims for accounts administered by the Veterans Benefits Administration were furloughed regardless of the funding source. Subsequent clarification of shutdown guidance, however, permitted VA to except employees needed to obligate funds in programs with existing obligation authority. Based on this guidance, VA's General Counsel determined that because VA's life insurance programs are funded through either trust funds, trust revolving funds or public enterprise revolving fund accounts, the processing of insurance claims and the payment of insurance awards could resume. In addition, because VA has permanent indefinite authority to pay obligations of the Liquidating and Financing Accounts of the Loan Guaranty Revolving Fund and the Guaranteed and Indemnity Fund, VA could also resume administering those functions. Accordingly, 200 insurance employees were recalled January 3, 1996 and 400 loan guaranty employees were recalled January 5, 1996, in order to process appropriate activities of those programs.

**Federal Supply Schedule Contract Audits.** The Office of Inspector General (OIG) conducts Federal Supply Schedule (FSS) contract audit and advisory services and reviews of contractor compliance with drug pricing provisions of P.L. 100-585. These activities are funded through a reimbursable arrangement with the VA's Supply Fund. The Supply Fund is a revolving fund and is not funded by direct appropriations. During the shutdowns, OIG staff (17 FTE) engaged in these audit and review activities continued to work. Operational changes were not required.

**Office of Financial Management.** VA's Office of Financial Management noted that in general, operations of trust and revolving funds and excepted activities suffered from the lack of support typically provided by furloughed employees. For example, the establishment of new accounting codes to support field fiscal activities was completely shut down, preventing the timely and accurate recording of fiscal information; payroll operations did not receive adequate guidance, resulting in reprocessing of payroll data; and meetings between furloughed and excepted or funded employees were canceled, resulting in delays in needed site visits, system enhancements, and other improvements.

**11. The President decided to call 1700 VA field staff back to work to process new VA claims--even though the agency was not going to pay benefits because veterans' benefits are in an annual appropriations stream, rather than indefinite or multi-year appropriations. Why should you recall intake workers to sign up new beneficiaries that you recognize you can't pay?**

Based on the below legal rationale, the Department of Justice opined that VA could call in employees to date applications for benefits and appeals, since a VA claimant may have a property right in the underlying benefit from the time an application is received. VA's failure to preserve the effective date of receiving a claim might result in a partial loss of a benefit, resulting in the deprivation of a property right.

In opinions of April 25, 1980, and October 16, 1995, which analyzed the provisions of the Antideficiency Act (31 U.S.C. §§ 1341 and 1342), the Attorney General of the United States elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions. One example is the "necessary implication" exception which allows agencies to incur obligations in advance of appropriations for the administration of benefit payments under entitlement programs to the extent that funds are available. We agree with the statement in question 11 that funds to pay VA benefits were not available, and therefore, VA was not authorized to bring in additional employees to actually pay benefits.

However, the basis for recalling these employees was the result of an oral opinion given by the Department of Justice in a conference call with VA officials during the lapse of funding in November of 1995. The opinion was based on the Department of Justice's interpretation of the language in section 1342, in which the Federal government is precluded from employing personal services "except for emergencies involving the safety of human life or the protection of property." Relying on the principles of due process and an old decision of the Comptroller of the Treasury, Comptroller Tracewell to the Postmaster, 9 Comp. Dec. 182 (1902), the Department of Justice concluded that the "protection of property" contemplated by section 1342 extends beyond property owned by the Federal government and includes property in which the government has an immediate interest or has some duty to perform in connection with the property.

VA requested a written confirmation of the oral opinion. Please find enclosed a copy of the March 15, 1996, Department of Justice opinion.

**12. During testimony the Subcommittee heard several examples of backlogs that would accumulate for each day of a potential shutdown. Please provide the Subcommittee with an inventory of any backlogs that your Department associates with the shutdowns. In light of OPM's January 17, 1996, guidance to restore annual leave, please provide your management plan to reconcile the accumulated leave and the workload backlogs attributable to furloughs.**

**Veterans Health Administration (VHA).** Although direct health care services to veterans were continued during the shutdowns, most employees in VHA headquarters were furloughed. As a result, the following delays and backlogs were experienced.

- **CD-ROM Equipment Purchase and Installation Project:** 4 weeks delay. This project allows for the elimination of paper directives and forms throughout VHA via use of CD-ROM.
- **DHCP Software Development for 10-10T:** 4 week delay. This project will allow for a computerized Form 10-10T, Application for Medical Care.
- **Resource Based Relative Value Scale Software Development:** 3 weeks delay. This project allows VA to utilize the Health Care Financing Administration (HCFA) payment schedule for private outpatient care under VA auspices.
- **Centralization of Fee Basis Payment Process:** 4 weeks delay. This project will allow for all VA Fee Basis care payments to be processed centrally at the CHAMPVA center.
- **1996 "Means Test" Level Implementation:** 2 weeks delay. Provides necessary financial information necessary to determine a nonservice connected veteran's category of care.
- **HCFA Price Implementation:** 4 weeks delay. Provides computerized financial information for determining billing rates for private inpatient care under VA auspices.
- **IVC Equipment Purchase (National Buy RFP):** 4 weeks delay. Provides new VA Patient Identification with demographic and photographic information.

During the November 1995 shutdown, activities of the Health Administration Center, which processes claims and requests to authorize or reimburse for health care services, were also impacted. This included processing applications for CHAMPVA and Foreign Medical Care benefits, processing of beneficiary and vendor reimbursement claims, development of appeal cases associated with those benefit programs, and other initiatives to promote efficiency and contain administrative costs of providing health care. During the course of the furlough, approximately 240 applications for benefits, 12,000 claims for reimbursement, and 540 appeal cases were received and added to the processing inventory that was pending at the onset of the furlough. In addition, 905 written inquiries were received and added to pending inventory and 3,160 telephonic inquiries were attempted but unanswered. Although most HAC operations were continued during the second shutdown, the absence of appropriations caused suspension of disbursements for an estimated 38,000 claims totaling over \$5.8 million. The situation created an additional burden on beneficiaries, and generated an increase of over 120 calls per day.

**Veterans Benefits Administration (VBA).** The following is a summary of the impact of the furloughs on workload in the Veterans Benefits Administration.

About 1.3 million pieces of mail were received in VA regional offices during the shutdowns. Prior to the November shutdown, the total compensation and pension claims pending were 397,000. That total peaked at approximately 420,000 after the second shutdown.

Before the first shutdown, VBA had reduced the time for decisions on original claims for compensation to about 146 days. As of January 31, 1996, this number had increased to 152 days. Processing time is expected to continue increasing for the next several months and then begin to decline again to about 140 days for the month of September. However, the cumulative impact of these trends will increase the cumulative days pending to around 150 days for FY 1996, an increase of 10 days over the original estimate.

In mid-November, there were 90,000 education claims pending. As of the end of January, there were 136,000 claims pending. While the shutdowns certainly contributed to the increase, they were not its exclusive cause. The volume of education claims fluctuates in correlation to the schedule of school semesters. Consequently, January is typically a large volume month for school registrations. Payments to beneficiaries with an education claim pending are currently being processed within 35 days for an original claim and 25 days for a reopened claim.

The increased workload in home loan guarantees and appraisals, caused by the shutdown, has been processed and the pending is back to a normal level.

The 8,000 Vocational Rehabilitation Counseling appointments that were canceled because of the shutdown are being rescheduled. We do not have an estimate for completing all vocational rehabilitation counseling rescheduling at this time.

**National Cemetery System (NCS).** The following is a summary of backlogs experienced in National Cemetery System activities due to the shutdowns. As resources permit, NCS will approve overtime to remedy backlogs created by the shutdowns.

- Approximately 27,000 headstone and marker orders were not processed during the furloughs.
- Approximately 16,000 hours normally devoted to the installation of headstones and markers were lost during the furloughs.
- Approximately 26,000 hours per month are devoted to preventive maintenance of equipment and buildings, grounds and graves maintenance, seeding and fertilizing, establishing turf areas, and renovation and repair caused by seasonal storms and other factors; it is unlikely that many of these lost hours can be made up during this fiscal year.

Prior to the shutdowns, adequate contract provisions were in place to provide accurate and timely delivery of headstones and markers. The shutdowns prevented processing of orders and the payment of contractors for delivery of headstones and markers. This left many contractors with no alternative but to terminate employees and close down major production lines. Now that the shutdowns are over, many manufacturers are struggling to recruit new employees skilled enough to meet the demands of the orders now being placed. The shutdowns also prevented the development of necessary specifications to post bids on the new upright granite headstones. This contract should have been awarded by now, but due to the shutdowns is long overdue for distribution to potential bidders, thus delaying manufacture, delivery and installation of these headstones.

NCS reports that families are concerned that graves have had only temporary markers for a very long time; they are further disillusioned when they learn that the delivery of the permanent headstone or marker is still months away. The volume of telephone calls to the Office of Memorial Programs "800" number are at an all-time high and little satisfaction can be offered to callers at this time. Dissatisfaction with service delivery has resulted in increased correspondence, including Congressional correspondence, and the need to devote many more hours than is normal to addressing concerns caused by the shutdowns.

**Board of Veterans' Appeals (BVA).** The following is a summary of the impact of the furloughs on workload in the Board of Veterans' Appeals.

The most notable effect of the shutdowns on the operations of the BVA is the loss of decisions that otherwise would have been made during the period of the furloughs. BVA estimates that approximately 2,400 VA appellate decisions were not made that would have been made during the two shutdown periods. This loss incrementally adds to VA's current appellate backlog and to the time all VA appellants must wait for decisions on currently pending appeals. BVA originally estimated that it would be able to produce a total of 35,200 appellate decisions during FY 1996, which would enable the Board to achieve an end-of-year response time of around 640 days. Decision-making performance losses associated with the shutdown reduced expected FY 1996 BVA production by approximately 2,400 decisions.

Eighteen appellate hearings scheduled to be conducted in the BVA's Washington, DC, offices during the period of the shutdowns had to be canceled. These hearings must be rescheduled for some future date, at the option of the appellants, thus delaying final decisions on the related appeals. Two VBA Board members were conducting field hearings in Chicago at the time of the first shutdown announcement. They were recalled to their Washington, DC, duty station, and 52 appellate hearings scheduled for that week were canceled. In addition, 86 hearings scheduled to be conducted in Huntington, WV and Roanoke, VA during the week of January 8-12 were canceled.

**Office of the Inspector General (OIG).** The major backlog in OIG workload that accumulated during the shutdowns resulted from the Hotline staff not being available to

respond to calls and letters reporting fraud, waste and abuse in VA programs and operations. During a normal 4-week period, the OIG Hotline would receive about 1,400 contacts. In addition, important OIG services provided to veterans and the general public, the Department, and Congress were delayed. For example:

- Work was suspended on responding to 86 Freedom of Information Act (FOIA) requests from the media, veterans and the general public for information in OIG reports and files.
- All work was stopped on about 50 audits, 60 healthcare inspections, and 20 special inquiries that were in process at the time of the furlough. Delays in completing this work could increase the Department's vulnerability to fraud, waste and abuse in its programs and operations.
- Work continued on only a few of the 350 active criminal investigations currently being conducted, including drug trafficking. The collection of information needed to successfully prosecute the subjects of these investigations was delayed. OIG reports that while it may be possible to "catch up" and continue with these investigations, some time sensitive information has been lost.
- Work was stopped on responding to 40 priority inquiries from members of Congress.

**Other Headquarters Activities.** The following impacts were reported for other VA headquarters activities as a result of the government shutdowns.

- With furlough of virtually the entire Office of Public Affairs, the Department's ability to respond to national and local media and public inquiries and to disseminate materials and information regarding the impact of the shutdowns and veterans' benefits in general was severely restricted.
- Archival and news media monitoring operations were suspended, causing the loss of materials used for historical and reference purposes.
- Development of products and events such as the Veterans' Benefits handbook and the upcoming National Disabled Veterans Winter Sports Clinic were temporarily halted.
- Responses to priority correspondence, including Congressional inquiries, and development of critical management, budgetary and legislative reports, were delayed.
- The backlog of EEO investigations increased by approximately 175 cases.
- The Office of Security and Law Enforcement reported a backlog of 14 inspections as a result of the shutdowns and a delay in one investigation. Two Basic Police Training classes were canceled, resulting in a backlog of new police officers requiring training.

- Master contract negotiations with the American Federation of Government Employees for a collective bargaining agreement covering 120,000 of the Department's employees were delayed from January until March.
- Advisory services were not available to VHA field stations as they conducted wage surveys and analyzed data for new wage schedules for nurses as required under the Nurse Pay Act. Through extraordinary staff efforts, virtually all schedules were validated after return from furlough in time for automated processing January 23, 1996.
- Delays were experienced in processing physician special pay actions and other pay matters affecting employees.
- Development of new policy was delayed for critical matters such as staffing adjustments for medical personnel.
- Backlogs were experienced in headquarters finance operations, including payroll processing functions, vendor payments, processing of travel vouchers, and payments to other Federal agencies. (Most backlogs have been or will be reduced to pre-furlough levels through use of overtime, compensatory time, or planned process improvements.)
- Delays in developing or enhancing major automated systems, such as the Financial Management System and PAY-VA, as well as resolution of production and other problems, were experienced.
- Other information resources management backlogs or delays were reported in such areas as Freedom of Information Act/Privacy Act; Release of Names and Addresses; Federal Register publications; telecommunications activities; and delegations of authority.

**Management Plan.** VA offices reported that the Office of Personnel Management guidance on restoration of annual leave to furloughed employees is not likely to present a significant problem in resolving backlogs. Individual leave requests will be approved judiciously, and consistent with operational requirements. Employees will have until the end of 1998 to use the restored leave, which should provide sufficient opportunity to schedule time off appropriately.



## U. S. Department of Justice

## Office of Legal Counsel

Office of the  
Deputy Assistant Attorney General

Washington, D. C. 20530

March 15, 1996

Mary Lou Keener  
General Counsel  
Department of Veterans Affairs  
Washington DC 20420

Dear Ms. Keener:

By letter of December 14, 1995 to Christopher H. Schroeder, then a Deputy Assistant Attorney General in this office, you requested written confirmation of oral advice supplied during the lapse of funding for the Department of Veterans Affairs that occurred in November of 1995.

Specifically, the advice related to whether there was a legal basis to find that some 1700 employees of the Veterans Benefits Administration could continue working despite the lapse in funding, because these employees were needed in order to accept benefits claims on behalf of veterans. On the basis of the facts presented to us that the time of the oral advice, and repeated subsequently in your letter, we concluded that there was. That continues to be our conclusion.

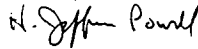
The Antideficiency Act, 31 U.S.C. §§ 1341, 1342, ("ADA") prohibits any officer or employee of the United States from incurring obligations of any kind, including for personal services, when an appropriation is lacking for those obligations, unless authorized by law. 31 U.S.C. § 1341(a)(1)(B). One such exception to the general rule of the ADA that is authorized by law permits an officer or employee of the United States to "employ personal services" "for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. Pursuant to this emergency exception, departments such as the Department of Veterans Affairs may lawfully obligate the United States to pay for the services of employees whose work activities "involv[e] ... the protection of property." *Id.* The general construction of the emergency exception was set forth in a 1981 opinion by Attorney General Civiletti, and followed by all subsequent administrations. See "Authority for the Continuance of Government Functions During a temporary Lapse in Appropriations," 5 Op. O.L.C. 1, 7-11 (1981).

In determining the scope of the term "property" for purposes of the emergency exception, both the executive branch and the Comptroller General have concluded that it encompasses at least property owned by the United States itself, as well as private property in which the United States "has an immediate interest or in connection with which it has

some duty to perform." 9 Comp. Dec. 182, 185 (1902) (decision of the Comptroller of the Treasury). In the cited decision, the Comptroller of the Treasury determined that paying for the services of an individual who gathered up mail scattered in a train wreck came within the emergency exception. As the Comptroller General has put it, the emergency exception extends to the protection of private property "for which the government has some responsibility." Principles of Federal Appropriations Law, 2d Edition, Vol. II, at 6-70 (1992).

Under the laws governing awards of certain veterans benefits, the date on which a veteran files an application for such benefits establishes the date on which benefits begin to accrue. See, e.g., 38 U.S.C. §5110(b)(3)(A) ("the effective date of an award of disability pension to a veteran ... shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date ..."). To the extent that Veterans Affairs offices are unable to receive applications to establish the effective date of such benefits, veterans may not be able to establish their eligibility and, as a result, may lose benefits to which they would otherwise be entitled. On these facts, we concluded that the statutory scheme had charged the Department of Veterans Affairs with the responsibility to receive applications for benefits in a timely manner in order to protect such benefits as might otherwise be lost. Consequently, employees who accept benefits claims in order to secure benefits for veterans are performing functions "involving the protection of property" within the meaning of the emergency exception to the ADA, and therefore employing their personal services is permissible under the ADA.

Very truly yours,



H. Jefferson Powell  
Deputy Assistant Attorney General

U.S. DEPARTMENT OF LABOR  
DEPUTY SECRETARY OF LABOR  
WASHINGTON, D.C.  
20210

December 29, 1995

The Honorable John L. Mica  
Chairman  
Subcommittee on Civil Service  
House Government Reform and Oversight Committee  
2157 Rayburn House Office Building  
Washington D.C. 20515-6143

Dear Mr. Chairman:

This is a follow-up to my letter of December 22, 1995, which acknowledged receipt of your letter of December 20, 1995, in which you requested information on attendance and leave practices for the Department. As promised in my letter, today I am providing information requested in items 2B, 3A, 3B, and 3D. I recognize that the enclosed information does not completely respond to all the questions raised in your letter; however, I wanted to provide the information which is now available. As I indicated in my prior letter, we are gathering the remainder of the information.

**Item 2B**

Enclosure I provides information, by agency, on the number of DOL staff that worked during the 1995 shutdown periods. The difference between the number of employees working during the November 14 shutdown and the shutdown during the week of December 25 is attributable to the historically reduced workload of the Department including the fact that approximately 17 percent of employers are closed during this week.

**Items 3A, 3B, and 3D**

During the November 1995 lapse in appropriations, annual leave was cancelled for DOL employees. To the best of my knowledge, the circumstances and timing of prior lapses in appropriations for the Department did not necessitate cancelling leave. At this time, no determination has been made about annual leave policies during the current shutdown.

Item 3A Pursuant to guidance provided by the Office of Personnel Management (Enclosure II) regarding the November lapse in appropriations, annual leave was cancelled for employees who were furloughed due to lack of funds and for employees who were required to work during the furlough.

Page 2

Item 3B Each agency of the Department prepared a shutdown plan which specified activities that could legally continue during the shutdown, thereby enabling agencies to identify which employees would be placed in furlough status as well as those who would be working during a lapse in appropriation. Based on these plans and the above noted OPM guidance, employees were advised by their supervisors that they were either furloughed or required to work during the shutdown period, and, accordingly, their leave was cancelled.

Item 3D Leave that was cancelled can be rescheduled in accordance with applicable personnel rules.

#### **Remaining Information**

We should be able to provide you with the information you requested in Item 1 in approximately one week, but the information responses for Items 2A, 3C and 3E will take substantially longer. Because of the decentralized location of the records for the information you requested, responding completely is a very time intensive effort and we project that gathering the information will take at least three to four weeks. This effort is further complicated by the current suspension of operations.

We will endeavor to provide the remaining information to the Subcommittee by the end of January, 1996, and will work with Garry Ewing of the Subcommittee staff should we encounter any difficulties in responding. I want to assure you that we are making every effort to respond to your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Glynn', with a long horizontal flourish extending to the right.

Thomas P. Glynn

Enclosures

ENCLOSURE I

**DEPARTMENT OF LABOR  
EMPLOYEES WORKING DURING SHUTDOWN PERIODS**

	November 14 - 19		December 16 - 24		December 25 - 29	
	Employees Working	% of Total	Employees Working	% of Total	Employees Working	% of Total
ETA	72	5	56	4	71	5
OAW	24	7	22	7	9	3
PWBA	58	10	85	15	83	14
ESA	1,076	31	931	26	756	21
OSHA	324	15	422	20	418	20
MSHA	1,112	48	1,048	45	808	35
BLS	99	4	26	1	25	1
DM	500	20	343	14	341	14
ASVET	4	2	70	28	10	4
OIG	38	8	40	9	40	9
TOTAL	3,307	21	3,043	19	2,561	16

U.S. DEPARTMENT OF LABOR  
DEPUTY SECRETARY OF LABOR  
WASHINGTON, D.C.  
20210

AUG 2 1996

The Honorable John L. Mica  
Chairman  
Subcommittee on Civil Service  
House Government Reform and Oversight Committee  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

Dear Mr. Chairman:

This is a follow-up to my letter of May 3, 1996, which provided you an interim response of your letter dated January 18, 1996 in which you requested information on the shutdown practices of the Department of Labor. As promised in my letter, today I am providing responses to all the remaining questions that we were unable to provide earlier.

**Inquiry 3:** Please provide a report, by agency and by category, of all amounts and forms of premium pay (overtime, night differential, weekend differential, etc.) that was paid to agency employees who were furloughed during each shutdown.

**Response 3:** Guidance from the Office of Personnel Management, see attachment I, allowed furloughed employees to receive premium pay, provided these employees were regularly scheduled to perform work that would entitle them to such pay. Attachments II and III display the estimated amount of premium pay that was paid to agency employees who were also furloughed at any time during the shutdowns. These amounts are estimated because the Department's payroll system allows for the information to be retrieved only by pay period, a 2 week time period, and not for the actual dates of the shutdown. The information received from the payroll system was then estimated in order to provide the estimated amounts of premium pay.

**Inquiry 4:** Please provide a report, by agency, of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and the amounts paid to agency employees. Please describe any costs that will be incurred by your Department as a result of efforts to collect reimbursement of these payments after routine pay is restored.

**Response 4:** The Department estimates that over 100,000 initial claims were filed by furloughed employees during the shutdowns, with 34 States paying over 12,000 of these claims for an estimated total of \$2.2 million in benefits; however, the States' reports do not include the initial claims data by Federal agency, nor do they separately report benefit payment data for furloughed employees. Therefore, the initial claims and amounts paid figures are aggregates for all Federal agencies.

The States act as agents for the Federal government in operating the Unemployment Compensation for ex-Federal Employees (UCFE) program. Federal law provides that UCFE benefits will be paid to Federal employees by the State in the same amount, on the same terms, and subject to the same conditions that apply to individuals filing unemployment compensation claims under provisions of the applicable State unemployment compensation law. Each State that paid UCFE benefits to furloughed Federal employees determined that these payments were overpayments under the provisions of its State law, since the furloughed employees were retroactively paid their salaries for the furlough period. States receive annual federal grants under Title III of the Social Security Act to administer the program. The additional cost to collect overpayments will have to be absorbed under those grants.

The Department's roles are primarily restricted to oversight of the State programs and managing the Federal Employees Compensation (FEC) Account. The Department collects information quarterly from the States on the amount of UCFE benefits paid, by Federal agency. The Department then bills the Federal agencies for the amounts they owe the FEC Account, from which the States draw money to pay the UCFE benefits.

**Inquiry 5:** Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.

**Response 5:** The cost associated with the November shutdown and the December-January shutdown was approximately \$7.3 million and \$29.4 million, respectively, paid to DOL employees who did not work during those periods. If there were any unusual costs or any savings from these shutdowns they were incidental.

**Inquiry 9:** Please provide estimates of the numbers of employees and the amount of accrued annual leave that will be restored by your Department as a result of employees required to work during the second shutdown. Please describe any other effects that the second shutdown will have on the administration of employees' leave programs.

**Response 9:** A review of the Department's time and attendance records indicate that over 6,000 employees forfeited some amount of annual leave. Over 284,000 hours of forfeited annual leave, valued at \$7.8 million, was restored to eligible employees consistent with the guidance issued by the Office of Personnel Management (OPM).

Once a Continuing Resolution was passed by the Congress and signed by the President on January 6, 1996, we submitted an estimated payroll to Treasury so that we could immediately pay our employees to help minimize the financial hardship they may have experienced as a result of the shutdown. Since this estimated payroll run did not originally capture leave taken on the first day of the shutdown, we developed and implemented a timekeeping mechanism to ensure that those individuals on leave status on the first day of the shutdown were so charged.

\*\*\*

I appreciate the opportunity to submit my final response to your inquiry. Should you have any questions about this letter, please contact Mary Ann Richardson, Deputy Assistant Secretary for Congressional and Intergovernmental Affairs, at (202) 219-6141.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia A. Metzler', with a large, stylized flourish at the end.

Cynthia A. Metzler

Enclosures

## ATTACHMENT I

November 21, 1995

## MEMORANDUM FOR DIRECTORS OF PERSONNEL (CPM-95-8)

FROM: ALLAN D. HEUERMAN  
ASSOCIATE DIRECTOR  
FOR HUMAN RESOURCES SYSTEMS

SUBJECT: Pay and Leave Treatment of Employees Affected by the  
Lapse in Appropriations; Documentation of Personnel  
Actions

Congress has passed and the President has signed legislation providing as follows:

Any Federal employees furloughed as a result of a lapse in appropriations, if any, after midnight November 13, 1995, until the enactment of this Act shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

The purpose of this legislation is to make Federal employees whole by ensuring that they receive their standard rate of compensation for the entire period of the lapse in appropriations. With regard to persons who would have been in a previously approved paid leave status if the lapse in appropriations had not occurred, the policy set forth below is consistent with the instructions provided to agencies on November 17, 1995. These instructions were based on the premise that, during the lapse in appropriations, employees must be (1) at work performing excepted activities, or (2) furloughed, and that they cannot therefore be in a paid leave status during that period. Such employees must receive the same pay they would have received for an equivalent period of work performed for the agency, without regard to any previously approved paid leave.

The following guidance has been prepared by the Office of Personnel Management in consultation with the Office of Management and Budget. As used below, the term "excepted employees" refers to employees who were excepted from a furlough because they were performing functions related to national security, protection of life or property, or the orderly suspension of agency operations.

**Pay**

For periods of time during which employees were furloughed, they must receive the same pay they would have received for an equivalent amount of work performed for the agency. Therefore--

- o Employees are entitled to receive their rate of basic pay for all periods of time during which they would have been in a pay status but for the furlough;
- o Employees who were regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable are entitled to receive overtime pay, night pay, or other premium pay as if the work had actually been performed;
- o The hours of duty during which employees were furloughed (including regularly scheduled overtime hours and standby duty) must be considered ~~hours of work~~ for pay administration purposes under the Fair Labor Standards Act; and
- o Allowances, differentials, and other payments must be paid as if the employee actually continued to work.

**Excused Absences and Charges to Leave**

- o Except as provided below, absences resulting from the furlough of employees during the lapse in appropriations must be recorded as excused absences and may not be charged to any form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off, or credit hours under a flexible work schedule.
- o In the case of employees who were on approved leave without pay during the lapse in appropriations, absences during the lapse in appropriations must continue to be charged to leave without pay for the duration of the period of approved leave without pay.
- o In the case of employees who were on approved paid leave (or compensatory time off or credit hours) on November 14, leave (or compensatory time off or credit hours) should be charged only for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. The remaining period of time in the employee's regularly scheduled tour of duty must be recorded as an excused absence.

~~Use or Lose~~ Annual Leave

- o Employees and agencies should make every effort to schedule, within the time limits specified by regulation, any additional ~~use or lose~~ annual leave now made available to a furloughed employee because previously approved annual leave was canceled during the lapse in appropriations. If, however, the employee is unable to reschedule such annual leave and it is forfeited at the end of the leave year, the amount of annual leave that was canceled during the lapse in appropriations may be considered for restoration under 5 CFR 630.308.

Alternative Work Schedules (AWS)

- o Each agency should have a policy specifying when flexible work schedules must be established and may be changed. Normally, such schedules are established in advance of the pay period involved. Under such a policy, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the pay period begins.

Documentation of Personnel Actions

- o Agencies should not process SF 50's to document a furlough resulting from the lapse in appropriations on November 14, and SF 50's that were processed must be canceled using Nature of Action Code ~~001~~. Do not record the furlough with any document designated for long-term filing in the Official Personnel Folder.
- o Agencies need not provide a furlough notice to an employee who did not receive a notice during the lapse in appropriations.

OPM Contacts

- o Questions on pay and leave entitlements may be directed to the Office of Compensation Policy on (202) 606-2858.
- o Questions on furlough procedures may be directed to the Office of Labor Relations and Workforce Performance on (202) 606-2920.
- o Questions on the documentation of personnel actions may be directed to the Office of Workforce Information (202) 606-4415.

**Estimated amount of premium pay that was paid to agency employees who were furloughed at any point in time during the November Shutdown.**

**Attachment II**

Agency	Overtime Total	Retention Total	Foreign Total	Night Total	Holiday Total	Sunday Total	Grand Total
ETA	\$558	\$0	\$0	\$0	\$0	\$0	\$558
PWBA	\$423	\$112	\$0	\$0	\$0	\$0	\$535
ESA	\$1,193	\$0	\$175	\$21	\$0	\$0	\$1,389
OSHA	\$455	\$0	\$0	\$0	\$275	\$0	\$730
MSHA	\$9,459	\$0	\$0	\$3,384	\$945	\$1,808	\$15,596
BLS	\$5,128	\$0	\$0	\$103	\$0	\$0	\$5,231
OIG	\$0	\$0	\$0	\$0	\$245	\$0	\$245
DM	\$3,981	\$0	\$1,133	\$25	\$724	\$362	\$6,225
<b>Total</b>	<b>\$21,197</b>	<b>\$112</b>	<b>\$1,308</b>	<b>\$3,533</b>	<b>\$2,189</b>	<b>\$2,170</b>	<b>\$30,509</b>

**Estimated amount of premium pay that was paid to agency employees who were furloughed at any point in time during the December-January Shutdown.**

**Attachment III**

<u>Agency</u>	<u>Overtime Total</u>	<u>Retention Total</u>	<u>Foreign Total</u>	<u>Night Total</u>	<u>Holiday Total</u>	<u>Sunday Total</u>	<u>Grand Total</u>
ETA	\$249	\$0	\$0	\$0	\$0	\$0	\$249
PWBA	\$51	\$281	\$0	\$0	\$0	\$0	\$332
ESA	\$252	\$0	\$439	\$7	\$0	\$0	\$698
OSHA	\$371	\$0	\$0	\$10	\$0	\$0	\$381
MSHA	\$1,628	\$0	\$0	\$868	\$0	\$303	\$2,799
BLS	\$2,504	\$0	\$0	\$231	\$0	\$0	\$2,735
OIG	\$0	\$0	\$0	\$0	\$0	\$0	\$0
DM	\$3,787	\$0	\$1,885	\$0	\$119	\$0	\$5,791
<b>Total</b>	<b>\$8,842</b>	<b>\$281</b>	<b>\$2,324</b>	<b>\$1,116</b>	<b>\$119</b>	<b>\$303</b>	<b>\$12,985</b>



ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

APR 04 1996

The Honorable John L. Mica  
Chairman  
Subcommittee on Civil Service  
Committee on Government Reform and Oversight  
U.S. House of Representatives  
Washington DC 20515

Dear Mr. Chairman:

This responds to your letter of January 18, 1996 requesting additional information related to Treasury's shutdown process and procedures. I have enclosed our responses to your questions.

Thank you for your inquiry and the opportunity to testify before your subcommittee. I hope the enclosed helps to explain further the complexities associated with the unfortunate situation of a government shutdown.

Sincerely,

George Muñoz  
Assistant Secretary (Management) and CFO

## ADDITIONAL QUESTIONS AND ANSWERS

From December 6, 1995 Hearing "The Government Shutdown: What's Essential"  
(Subcommittee on Civil Service)

Q1. Please describe any changes in planning, procedures, and operations that your Department made between the November and the December-January shutdowns. Please submit any revisions and/or supplements to your Department's shutdown plans. In light of the substantial change between shutdown numbers reported in the second shutdown, what changes are contemplated regarding the Department's definition of emergency functions? Please provide the new legal reasoning that supports this change from previous shutdown plans.

A1. The Department of the Treasury's Appropriation Act (P.L. 104-52) was signed November 19, 1995 and provided funds through September 30, 1996. As a result, the Treasury did not shutdown operations during December-January. However, the Department would have reviewed and revised bureau shutdown plans in the event that its appropriation had not been signed; based on additional bureau information, consistent with the Attorney General's exceptions. In most cases, it's assumed that plan adjustments would have been as a result of an additional review of functions necessary for a short period (a day or two) versus a longer shutdown period.

The bureaus were notified that the shutdown plans were flexible documents, and that fine tuning their plans to fit the particular circumstances of the shutdown, including length was normal. The Department emphasized the importance of a phased plan that addressed both short-term versus long-term shutdowns. Some bureaus, particularly IRS, set forth their intent to review operations and provide adjustments if a shutdown lasted longer than a week.

Q2. Please submit the numbers of persons furloughed in each agency during the two shutdowns. For each function which was subject to furlough during the first shutdown, but exempted from furlough during the second shutdown, please provide policy and legal reasons supporting the decision to change the status of the functions.

A2. The Treasury Department was not required to shutdown operations during December-January. During the November 14 - 19 shutdown the Treasury furloughed approximately 108,500 out of 153,700 employees.

Q3. Please provide a report, by agency and by category, of all amounts and forms of premium pay (overtime, night differential, weekend differential, etc.) that was paid to agency employees who were furloughed during each shutdown.

- A3. Amounts paid by Treasury Bureaus to furloughed employees for the November 14 - 19 shutdown follow:

Bureau	Overtime	Sunday Differential	Night Differential	Law Enforcement Availability Pay
Internal Revenue Service	\$0	\$3,321	\$164,728	\$0
Alcohol, Tobacco, and Firearms	0	0	0	29,213
Inspector General	0	0	0	6,000
Secret Service	307	0	20	1,092

Q4. Please provide a report, by agency, of the numbers of furloughed employees who filed for unemployment compensation during the shutdowns and the amounts paid to agency employees. Please describe any costs that will be incurred by your Department as a result of efforts to collect reimbursement of these payments after routine pay is restored.

A4. The November 15th - 19th furlough was not long enough for employees to qualify for unemployment compensation. With the exception of IRS, Treasury's bureaus have reported that there is no record of anyone filing for unemployment compensation.

Because of the nature of the IRS workforce (seasonal employees), IRS will not be provided unemployment information until the Department of Labor's report is available. The first quarter report for 1995 becomes available in May 1996. This report provides a cumulative amount of compensation paid from October 1, 1995 through December 31, 1995 and is not broken down by pay period. The report provides names and SSNs but does not differentiate between individuals who received unemployment because of the government shutdown from those who were seasonal employees released on furlough.

Q5. Please estimate the total costs to your agency associated with the interruption of operations during November and December-January. Please provide descriptions of any unusual costs imposed on the agency or other unanticipated consequences of these interruptions of operations. Please provide, too, an estimate of any savings associated with these interruptions.

A5. Estimated costs associated with the Department's shutdown of operations for the period November 15th - 19th are as follows:

- \$1,633,700 -- Costs of Developing Contingency/Shutdown Plans and Designating and Notifying Employees.

Amount includes the extraordinary costs associated with planning for and implementing the shutdown, such as shutdown-related planning meetings and briefings, costs of shutdown plan development, review and approval, providing information and guidance to employees related to shutdown, and any operational costs which would not have occurred but for shutdown.

- \$66,839,100 -- Salary & Benefits for those employees furloughed for scheduled work hours and not worked.
- \$3,600 -- Lost Discounts/Payment Penalties.
- \$300,000,000 - 400,000,000 -- Lost Revenue.

Using a conservative methodology, we estimate that furloughs resulted in a daily loss of between \$75M and \$100M through lack of enforcement actions by the IRS, or between \$300M and \$400M during the four-day furlough period. The IRS collects approximately \$286 billion in taxes through direct enforcement efforts. These taxes are not collected by voluntary compliance of the tax laws by taxpayers; IRS staff is needed to enforce and ensure collection.

Q6. Please indicate the shutdowns' impact on programs funded through trust funds, fees, carry over funds, or other revenues not tied to annual appropriations. Please describe any changes made in implementing these programs during the December-January shutdown.

A6. Several bureaus were exempted from shutdown based on alternate funding sources other than annual appropriations. These include the Office of the Comptroller of the Currency; the Office of Thrift Supervision, the Bureau of Engraving and Printing, and the Bureau of the Public Debt. The Federal Law Enforcement Training Center has been appropriated some funds for FY 1996 that were available to be used to continue operations.

Q7. Please provide staffing levels for all public affairs offices in the Department during the shutdown.

A7. See chart below:

DEPARTMENT OF THE TREASURY		
PUBLIC AFFAIRS STAFFING		
During Furlough Period		
Fiscal Year 1996		
Bureau/Organization Name	NUMBER OF EMPLOYEES	
	Total	Furloughed
Departmental Offices.....	15	11
Treasury Forfeiture Fund.....	0	0
Office of Inspector General.....	0	0
Federal Law Enforcement Training Center.....	3	0
Financial Management Service.....	3	1
Alcohol, Tobacco & Firearms.....	7	6
U.S. Customs Service.....	19	19
Financial Crimes Enforcement Network.....	7	4
United States Mint.....	3	2
Bureau of the Public Debt.....	3	0
Bureau of Engraving and Printing.....	12	0
Internal Revenue Service.....	300	298
U.S. Secret Service.....	14	0
Comptroller of the Currency.....	6	0
Office of Thrift Supervision.....	6	0
<b>TOTAL, PUBLIC AFFAIRS.....</b>	<b>398</b>	<b>341</b>

Numbers are approximate. Treasury bureaus/organizations do not necessarily have separate Public Affairs offices. The Public Affairs function is often combined with Legislative/Congressional/Media and correspondence functions.

Q8. Please provide a report of the number and furlough status of Presidential Appointees, noncareer Senior Executive Service personnel, and Schedule C appointees, by agency, during each shutdown.

A8. The following reflects the number and furlough status, for those employees within Treasury operations, that were subject to a shutdown during the November 15th - 19th time frame.

	Political Appointees	SES	Schedule C
Total Number	17	38	42
Total Furloughed	0	16	28

Q9. Please provide estimates of the numbers of employees and the amount of accrued annual leave that will be restored by your Department as a result of employees required to work during the second shutdown. Please describe any other effects that the second shutdown will have on the administration of employees' leave programs.

A9. None. The Department of the Treasury did not shutdown operations during December - January.

Q10. Please explain the "partially excepted" category used in the Treasury Department's plan.

A10. The category "partially excepted" referred to functional components of Treasury as opposed to the status of individual employees. A number of employees working in a "partially excepted" organization were classified as "excepted," while a majority in the same organization were in fact furloughed. For example, organizational components such as Personnel, General Counsel, Information Systems, were classified in the "partially excepted" category, and certain employees would be "excepted" based on their actual workload requirements.

Q11. What revisions or modifications did you require in plans submitted to your office by the Treasury Department's component agencies?

A11. The Department continually fine tuned the bureau shutdown plans before the shutdown based on additional bureau information, but did so consistent with the Attorney General (AG) exceptions. After the shutdown occurred there was some minor adjustments made, primarily for Departmental Offices (DO), that were consistent with the AG opinion. In all cases, these adjustments were due to an additional review of functions necessary for a short period (a day or two) versus a longer shutdown period.

Each bureau monitored their requirements and when a change was necessary brought employees back to work. Justifications to do so were sent to the Department for review and approval.

Q12. The plans of the IRS and Departmental offices contained notes that they either couldn't get down to 5% or retained employees would be around 5%. Did you establish a standard to shutdown in the vicinity of 95% of non-law enforcement or extraordinarily funded functions? What targets did you establish for component agencies?

A12. The Department did not establish standards or targets for Treasury bureaus to follow as to the number of "excepted" or "nonexcepted" employees that a bureau may or may not have. The Department's previous shutdown guidance had been issued in 1991 and contained a requirement to justify both legally and programmatically those positions to be retained whenever the number (not otherwise exempt because funding was available) retained exceeded 5% the number of employees on board at the beginning of the shutdown. The requirement was to ensure sufficient justification was provided to the Department for review and approval of the shutdown plans. Thorough documentation on all "excepted" functions was stressed. The Department wanted to ensure that plans clearly documented each "excepted" function.

Treasury's "excepted" activities were justified based on one or more of the following:

- ▶ those activities that have a continuing source of funding;
- ▶ those activities that are expressly authorized to continue even without funding;
- ▶ those activities that are authorized by necessary implication of, e.g., the need to support, activities that continue under another authority, such as the FMS's disbursement of benefit payments for the Social Security program, which has continuing funding;
- ▶ those activities covered by limited authority to employ (although not pay for) personal services for activities to the extent necessary to avoid "emergencies involving the safety of human life or the protection of property;"
- ▶ those activities that are necessary to the discharge of the President's constitutional duties (although this category must be construed narrowly); and
- ▶ functions necessary for a short period in order to ensure an orderly shutdown of operations.

"Excepted" activities were based on actual workload requirements. It was anticipated that with the passage of time, performance of activities that were "excepted" initially would no longer be required. Also, activities initially shut down may become "excepted" because of changed circumstances. In either case, only staff necessary to perform activities determined to be "excepted" at that time were to report to duty.

Q13. During testimony the Subcommittee heard several examples of backlogs that would accumulate for each day of a potential shutdown. Please provide the Subcommittee with an inventory of the workload backlogs that your Department associates with the shutdowns. In light of OPM's January 17, 1996 guidance to restore all annual leave, please provide your management plan for reconciling the accumulated leave and the workload backlogs that resulted from the

furlough periods.

A13. Examples of workload backlogs and impacts of the November 15th - 19th shutdown follow:

Alcohol, Tobacco and Firearms:

- \* 8,000 special occupational tax returns not processed
- \* 720 excise tax returns not processed
- \* 200 letter responses not processed
- \* 85 original alcohol/tobacco applications and amended application not processed
- \* 85 alcohol/tobacco tax claims not processed
- \* 20 variance requests not processed
- \* 296 firearms/explosives license applications not processed
- \* 1,000 alcohol label/formula approvals not processed
- \* 171 Firearms import permits applications not processed
- \* 249 Firearms import documents not processed
- \* 900 National Firearms Act registrations went unprocessed
- \* Delays in regulatory field inspections of alcohol and tobacco excise taxpayers and firearms and explosives dealers.

Internal Revenue Service:

- \* 48,000 taxpayer telephone calls to Area Distribution Centers went unanswered, delaying transmission of tax-related items; tax practitioners received their bulletins at least one week late; printing contractor schedules were disrupted.
- \* 79,000 fewer 1040s were processed, of which 46,000 involved refunds; each center reported an increase in the number and age of adjustments inventories; about 25,000 TeleTin calls requesting taxpayer identification numbers were not answered.
- \* 864 appeals cases were not resolved, prolonging the period of uncertainty for taxpayers who filed appeals and possibly increased their tax bills as interest continued to accumulate during the shutdown period.
- \* Delays in responding to taxpayer inquiries contributed to a backlog in other work such as issuing private letter rulings, technical advice memoranda and other correspondence. Delays were also experienced in responding to Congressional requests for information; providing legal opinions affecting legislative proposals; responding to FOIA requests and pending investigations; tax and general litigation cases not closed; and in providing counsel to other areas and activities of the Internal Revenue Service (e.g. Tax System Modernization). Taxpayers did not receive advice requested through formal conferences or by phone; one regulatory hearing was postponed; and approvals were delayed in about three Criminal Investigator undercover investigations.
- \* Approximately 66,000 Automated Collected System (ACS) incoming calls went unanswered; taxpayers and third parties were unable to reach ACS employee assistants. Additionally, 42,000 outgoing ACS calls were not made, resulting in additional interest due.
- \* Walk-in Assistance: 60,000 walk-ins were unable to obtain assistance; 17,000 were

unable to get forms/publications at walk-in locations. Requests for assistance during this period are traditionally more account-related, and it may be concluded that some taxpayers could incur interest/penalty costs due to this occurrence.

Treasury-wide:

- \* Vendors performing services under contract were affected. In one instant, an equipment vendor called several times, angered and confused about whether payments would be made. The vendor was not reassured when the payment procedure was explained, expressing lack of trust in the Government.
- \* Payments were delayed for many contracts across Treasury because contract technical representatives and contract specialists were on furlough.

U.S. Customs:

- \* An aircraft maintenance contractor expressed concern about delays affecting his ability to perform work. The issue of non-payment placed a strain on the Customs Service's relationship with their contractors and placed a large administrative burden on procurement personnel in processing equitable adjustments for these contracts.
- \* The shutdown created a large backlog of correspondence with Congress on constituent related issues and in communicating with the trade community and Customs field employees.
- \* In Saudi Arabia, the shutdown caused an interruption in training courses for 21 Saudi Arabian Customs Officers and resulted in sizable extra per diem them costs for the Saudi Arabian government. The shutdown also caused the cancellation of a TDY to Saudi Arabia funded by that government.
- \* Customs was scheduled to give a presentation at a trade association annual meeting, and had to cancel, as did other Government speakers. This left the customer with no Government speakers, and they had to scramble to fill the time slots.
- \* The Customs Service was unable to respond to overseas cables requesting information to pass through the State Department on to other countries.
- \* Phone calls from the public and foreign customs administrations were not answered. E.g., Since our import specialists in the field were not working, customers were not able to obtain answers on technical and policy questions in a wide variety of areas, including entry operations, drawback, value, AD/CVD, etc. E.g., the trade community was not able to obtain information from furloughed staff. Many first-time importers' calls went unanswered. Importers and attorneys calling for status updates of projects were not able to receive information.
- \* Drawback claims were not input to provide requests for accelerated payments to claimants .

Financial Management Service:

- \* Due to furloughs of physicians at some of the federal clinics, some required employee physical exams and applicant exams were cancelled or rescheduled. Phone calls related to the Report on Receivables Due from the Public, Report on Guaranteed Loans, and Civil Monetary Penalties Report were received each day

during the furlough. Credit agencies considered year-end reporting an essential function and were upset to find that the Financial Management Service, the lead agency for collecting and consolidating the year-end debt collection reports for OMB, did not have essential staff to answer questions and provide assistance.

U.S. Mint:

- \* Processing of mutilated and uncurrent coin at the Philadelphia, Mint was suspended. Because of the shutdown, the mutilated uncurrent Department, who redeems all condemned coins for the Treasury Department was unable to process returns, from banks and other institutions. All major redemption customers were notified not to return any coins. Many calls were received expressing dissatisfaction. Approximately forty jobs (or customers) went unprocessed creating a one week backlog processing customer orders. The only possible way to catch-up and avoid customer complaints is to work overtime at an estimated cost of \$4,000.00 (25 Mondays of overtime).

Where possible workload backlogs are/will be addressed through overtime, work prioritization and other means.

## GOVERNMENT SHUTDOWN II

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THURSDAY, DECEMBER 14, 1995

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CIVIL SERVICE,  
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Bass, Burton, Morella, and Moran.

Ex officio present: Representative Clinger.

Staff present: George Nesterchuk, staff director; Ned Lynch, professional staff member; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Elisabeth Campbell, minority staff.

Mr. MICA. I would like to call this meeting of the House Civil Service Subcommittee to order.

Today's hearing deals with the government shutdown, and we're going to hear some of our colleagues, Members of Congress, on a vast array of proposals, dealing with their various suggestions and approaches to handling the shutdown. I have an opening statement, and I believe our ranking member does. We will start with that and welcome our witnesses.

This afternoon we will really continue the subcommittee's oversight hearings on the administration shutdown of government operations during a lapse of appropriations. Last week the subcommittee heard nine administration witnesses describe their plans and their oversight of agencies' operations for the past shutdown and their preparation.

On Tuesday, four participants in that hearing wrote a letter to the President. We informed him, in part, of our conclusion, which is that the implementation of the shutdown was unnecessarily severe and some of the closings we found unjustified, even within the strictest requirements of existing law.

The testimony presented by senior officials of the largest government agencies demonstrated, in fact, that interruption of benefits and services could have continued, and that discrepancies occurred in the continuity of operations essential to human lives and safety.

We are pleased, however, that the administration has responded to many of the concerns we raised last week. The Office of Management and Budget has directed agencies to submit revised shutdown plans by December 10, we were told. On Tuesday, the administration announced that the Social Security Administration and the Department of Veterans Affairs would retain many employees who

had been furloughed on November 14. This is a welcome step toward a more cooperative approach to meet the needs of the American people and some of the Americans who most need the services of the Federal Government.

However, I am somewhat dismayed that several agencies have failed to provide OMB with an update of their plans for more orderly action, should another shutdown occur, and that could happen within the next 24 or 48 hours. Also, I am discouraged to find that OMB has failed to provide this subcommittee with revised shutdown plans, as we requested.

Tomorrow, as we all know, another continuing resolution will expire. If no progress is made on the budget issues, we could once again see a disruption of some of our Federal Government services. I wish that I could be more optimistic about the prospects for the next few days, but the threatening tone of a letter from which I will quote, entitled, "Open Letter to Federal Employees," of November 22, signed by the President and the Vice President, does cause me some serious concern.

This letter was brought to my attention by my fellow Florida colleague, Representative Dave Weldon. When he first saw the letter, he thought it was a hoax and called the White House to verify its authenticity. Let me read a few sentences that reflect the confrontational approach the administration has taken.

The President and Vice President wrote, "We can't promise you that your jobs and your lives won't be interrupted again. Too much is at stake for America. If you are held hostage again, we know that you would not want us to forfeit the nation's future as ransom."

[The letter referred to follows:]

Open Letter to Federal Employees  
from  
President Clinton and Vice President Gore

We are proud of the people who work for the federal government. Any Fortune 100 company would be lucky to have such a work force. Your work makes all Americans more safe, free, and prosperous. We are glad you are all back on the job.

We know it hasn't been easy for you, wondering when and if you would get your next pay check. And many of you had to bear the indignity of being called "non-essential," — some by government critics, some even by your own supervisors. Calling furloughed workers non-essential is deeply offensive and just plain wrong. The law forced us to furlough 800,000 workers whose jobs were not of an emergency nature. The law says nothing about "essential."

No one could say that medical research is non-essential. Or helping Americans go to college. Or rehabilitating a million disabled Americans. Or supporting the widows and orphans of veterans. Or keeping our drinking water safe. Or recruiting new volunteers for the armed forces. Or any of the long list of essential government activities that had to be temporarily suspended. In the short term, they were not emergencies, so the law prohibited them. But they remain clearly essential.

You all know that the law under which most of the government is operating expires on December 15th, and the debate that led to the November shut down is not over. We can't promise you that your jobs and your lives won't be interrupted again. Too much is at stake for America. If you are held hostage again, we know you would not want us to forfeit the nation's future as ransom.

So until this issue is settled the way we settle great issues in a democracy — through peaceful debate and compromise — you remain good people caught in what Churchill called "the worst system of government devised by the wit of man, except for all the others." And when it is settled, it is you federal workers who will once again carry out the will of the people, who will once again make it possible for America to be the winner. We salute you, and we thank you.

(signed)  
Bill Clinton

(signed)  
Al Gore

November 22, 1995

Mr. MICA. This message implies a threat of a shutdown of the government once again, and I confess to growing a bit weary of the rhetoric of this excess. The administration has consistently and needlessly exaggerated the potential adverse effects of a shutdown. Our last hearing demonstrated that they have actually more discretion in keeping truly essential functions open than they, in fact, used the last time. Their challenge is to use this discretion wisely at this time.

Last week, we heard administration witnesses describe their implementation of the most recent shutdown. Today, we will hear, as I said, Members of Congress address their assessments of these events and discuss their various legislative proposals to remedy some of the problems associated with the shutdowns.

I am pleased, also, that I have heard from leadership that they are willing to proceed and try to adopt some remedies, if there can be some consensus gained in making certain that we do have a reasoned and a unified approach, at least from the Congress, in trying to ensure that some of these essential services continue and, in fact, the spirit and the intent of the law is carried out.

[The prepared statement of Hon. John L. Mica follows:]

WILLIAM F. CLUNIER, JR. PENNSYLVANIA  
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ONE HUNDRED FOURTH CONGRESS

## Congress of the United States

### House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

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INDEPENDENT

MAJORITY—(202) 225-5074  
MINORITY—(202) 225-5081

### Opening Statement of the Honorable John L. Mica Chairman, Civil Service Subcommittee

#### Government Shutdown II December 14, 1995

Good afternoon, and welcome to this continuation of the Subcommittee's oversight hearings into the Administration's shutdown of government operations during a lapse of appropriations. Last week, the Subcommittee heard nine Administration witnesses describe their plans and oversight of agencies' operations.

On Tuesday, four participants in that hearing wrote a letter to the President. We informed him -- in part -- "Our conclusion . . . is that your implementation of this shutdown was unnecessarily severe, and some of the closings were unjustified, even within the strictest requirements of the law. The testimony presented by senior officials of the largest government agencies, . . . demonstrated interruptions of benefits and services that could have continued and discrepancies in the continuity of operations essential to human lives and safety."

We are pleased that the Administration responded to many of the concerns we raised last week. The Office of Management and Budget directed agencies to submit revised shutdown plans by December 10. On Tuesday the Administration announced that the Social Security Administration and Department of Veterans Affairs would retain many employees who were furloughed on November 14. This is a welcome step toward a more cooperative approach to meet the needs of the American people.

We are concerned, however, that the Administration has not yet provided copies of the revised shutdown plans to the Congress as we requested last week. Tomorrow, another continuing resolution will expire. If no progress is made on the budget issues, we could again see a disruption of government services. I wish that I could be more optimistic about the prospects for the next few days, but the threatening tone of the "Open Letter to Federal Employees" of November 22 that was signed by the President and the Vice President causes me concern.

This letter was brought to my attention by my Florida colleague, Dave Weldon. When he first saw the letter, he thought it was a hoax and called the White House to verify its authenticity. Let me read a few sentences that reflect the confrontational approach the Administration has taken.

The President and Vice President wrote, "We can't promise you that your jobs and your lives won't be interrupted again. Too much is at stake for America. If you are held hostage again, we know that you would not want us to forfeit the nation's future as ransom."

This message implies a threat to shut down the government again, and I confess to growing a bit weary of the rhetorical excesses. The Administration has consistently and needlessly exaggerated the potential adverse effects of a shutdown. Our last hearing demonstrated that they have more discretion in keeping trully essential functions open than they used last time. Their challenge is to use this discretion wisely.

Last week, we heard Administration witnesses describe their implementation of the most recent shutdown. Today, we will hear Members of Congress address their assessments of these events and discuss legislative proposals to remedy some of the problems associated with these shutdowns.

Mr. MICA. Our first panel this afternoon includes Members reflecting concerns of other jurisdictions in Congress. We will hear from Spencer Bachus of Alabama, of the Banking Committee; Mr. Peter Hoekstra of Michigan, who chairs the Oversight and Investigations Subcommittee of the Committee on Economic and Educational Opportunities; Mr. Ken Calvert of California, who chairs the Resources Committee Subcommittee on Energy and Mineral Resources; and Mr. J.D. Hayworth of Arizona, one of our distinguished first-term members.

We will also hear from other Members. This issue has attracted a great deal of attention. I believe the second panel will include some of the other Members who want to comment on the impact of the shutdown on Federal employees. Our witnesses include Mr. Joe Barton of Texas; Mr. Glen Browder of Alabama; Mr. George Gekas of Pennsylvania; Mr. Steny Hoyer of Maryland; Mrs. Karen McCarthy of Missouri. And we also have a request to testify from Mr. Sonny Bono, the honorable gentleman from California, and Mr. Dan Burton, from Indiana.

Now, I am pleased to recognize the ranking member of our subcommittee, who has provided tremendous leadership on this issue and other issues before the Civil Service Subcommittee, and has also requested that we take some action. In fact, some of the action we've done together has resulted, I believe, in some positive changes in the way the shutdown will occur, if it does, in fact, occur. And I thank him for his cooperation and leadership.

Mr. Moran, you are recognized for an opening statement.

Mr. MORAN. Thank you, Mr. Chairman.

I think the government shutdown was grossly irresponsible. It was short-sighted. At best; it was politically motivated and kind of a nutty thing to do. Now, we may not all agree with that conclusion, but what we're going to try to do is to see where we can reach some agreement to avert what was a real crisis that I think the Congress has to assume the greatest amount of responsibility for, because the fact is, we didn't get the appropriations bills even to the President in a timely manner.

And that's what it's all about. It's the appropriations process getting concluded in a timely manner, so that the agencies have their money by October 1. The fact that they did not meet that, in mid-November, we had to tell 800,000 Federal employees, after they had already come to work, to go back home, and to delineate them between those who were considered essential and nonessential, which was a fairly arbitrary distinction, in many cases.

We can't let a recurrence of that happen this time, if there is to be a shutdown. I don't think there should be a shutdown, but it would behoove us to go on that assumption, because stranger things have certainly happened this year.

So what we ought to be able to agree on is, No. 1, it was a terrible use of taxpayers' money to pay Federal employees for not working. For 4 days, Federal employees had to stay at home, were told to stay at home, when they wanted to be at work, and then we reimbursed them. I'm glad we reimbursed them. I have no problem, obviously, with the Speaker's commitment to reimburse them, which he made good on at the first legislative opportunity. But

those Federal employees should have been earning their pay. They wanted to, and I think the American people needed them to.

So the first thing we ought to do is to figure out a way to keep Federal employees on the job, and earning their pay. Then the second thing that we ought to do is to come up with a more reasonable distinction, if there is to be some criteria, in terms of who should get reimbursed.

Now, my legislation would simply keep people on the job and then reimburse them as soon as funds became available. In other words, it would do what we did the last time, except that the taxpayers would not be paying out \$750 million for work not performed. We have brought out in these hearings how unfair it was, as well, for some people to be on the job doing the work that they were charged to do but also the work of their colleagues who were not on the job, and then getting paid exactly the same.

Now, my legislation to do that, H.R. 2184, has been referred to the Government Reform and Oversight Committee. There is almost identical legislation that Congressman Gekas from Pennsylvania has introduced in previous sessions that has been referred to the Appropriations Committee.

I would hope that we could move in an expeditious way so that we could get some legislation on the books, particularly given the fact that this is Christmas time, so that we would not be punishing Federal employees for the inability of the Congress to get its job done. And I don't care if we blame the entire government, the executive branch, the judicial branch, whomever, but the point is that we ought not use Federal employees as pawns in what is essentially a political problem.

So, with that, I'm going to suggest that we find a way to bring this corrective legislation to the floor under the legislation we passed yesterday, which is called a martial law situation, where you can bring legislation to the floor without the normal procedural obstacles. And I think we ought to discuss that at the conclusion of this hearing. But, at this point, Mr. Chairman, I would be anxious to hear from other Members, many of whom, in looking at their testimony, agree that this is a situation that needs correcting and needs correcting very quickly.

Thank you.

Mr. MICA. I thank the ranking member.

Mr. Clinger, who is the chairman of our full committee, has joined us.

Did you have an opening statement?

Mr. CLINGER. I don't, Mr. Chairman. I want to commend you for holding these hearings and giving our Members an opportunity to tell us, from their experience, what the impact has been on their districts and on the Federal employees in their districts, and what sort of inconveniences and/or dislocations occurred as a result of the shutdown.

Clearly, there's a lot of blame that can be spread around here. I think our objective in these hearings is to get a clear idea of what we can do to ensure that we don't have a repetition of this and that there be some clearly understood parameters for how we handle this type of situation.

So I am supportive of your efforts. I think it needs to be a bipartisan effort, frankly, and I hope that it can continue to be that way. I commend you for holding the hearing.

Mr. MICA. I thank the chairman and would now like to recognize another distinguished member of our subcommittee and panel, Mr. Burton from Indiana.

Mr. BURTON. Thank you for the "distinguished," Mr. Chairman.

I think that almost everybody in the House and the Senate agrees that, if we do have another shutdown of government, the Federal employees should not pay the penalty for that. I have talked to the Speaker about that, and I think he is agreeable to legislation which would specify that any Federal employee who chooses to work during a government shutdown would be compensated. Those who choose not to work would not be compensated.

I have drafted legislation. I have talked to Mr. Moran and you, Mr. Chairman, and others about this. I think this legislation would be very helpful, would clarify the situation, and I think it would receive wide bipartisan support. And I hope that we can move that kind of a bill expeditiously through the committee and to the floor for passage, so that Federal employees won't have to worry at Christmas time and holiday times that, if there is a government shutdown, they might have to pay a severe penalty.

So I think it will ease a lot of minds and ease of lot of tension, and I hope we can move expeditiously on it.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentleman.

We have also received statements with requests to submit them for the record from Mr. Lazio, who chairs the Banking Committee's Subcommittee on Housing and Community Development; and Mr. Bennie Thompson of Mississippi; and others. Without objection, these statements and others will be made a part of the record.

[The prepared statements of Hon. Rick A. Lazio, Hon. Bennie G. Thompson, Hon. John A. Boehner, and Hon. John Ensign follow:]

**Rick A. Lazio**  
**Chairman, Subcommittee on Housing and Community Opportunity**

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**Statement submitted for the record to the Subcommittee on  
Civil Service Hearing on  
"Government Shutdown II"  
December 14, 1995**

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Thank you Mr. Chairman. As Chairman of the Subcommittee on Housing and Community Opportunity and the primary authorizing committee for the Department of Housing and Urban Development, I am especially grateful to the Civil Service Subcommittee for holding hearings on the implications of government shutdowns.

Over the last several weeks, a number of critical questions have arisen regarding contingency plans implemented by various Executive departments during the recent government shutdown. Among the more serious, are questions of whether staff levels at HUD may have been set with political concerns in mind.

During the shutdown, the Department declared that 97 percent of its 12,000 employees were non-essential, leaving only 400 employees to perform essential and legally mandated functions under HUD's responsibility. According to HUD's shutdown plan, contingencies were in place to address critical HUD functions "involving the safety of human life or the protection of property or activities essential to preserve the elements of the money and banking system in the United States." In addition, according to a November 17, 1995 HUD memo from General Counsel Nelson Diaz to the Secretary, HUD had prepared well and planned for staff levels needed to address critical HUD functions during a shutdown.

Nevertheless, Secretary Cisneros issued a statement on the first full day of government shutdown November 14, warning that the shutdown would condemn the homeless and people with AIDS to the streets. **In fact, according to their own shutdown plan, the Department had in place contingency plans that specifically addressed the homeless and AIDS programs because “failure to do so would imminently threaten the safety of human life.”**

Even more significant, is that while the General Counsel of the Department had determined that staffing levels were well prepared for prior to the shutdown, 3 days into the shutdown Counsel Diaz found that the 400 people deemed essential were “clearly not enough to perform the legally mandated functions under HUD responsibility.” **This begs the question: If HUD’s own General Counsel determined that the Department had sufficiently prepared for the shutdown, why were staff levels reduced to critically inadequate levels?**

Two weeks ago I wrote a letter to the Secretary raising these concerns and requesting a full and timely accounting of the plans that were implemented during the shutdown. **In the letter I communicated my strong belief that staff levels should not be manipulated to foment political opposition or engage in dangerous political games.**

Mr. Chairman, I commend you for holding these hearings. Although no member of this body is desirous of any type of government shutdown, today’s hearing is especially important to me as I continue to review HUD’s mission and its ability to serve the needs of the American people into the twenty-first century.

I look forward to today’s testimony and a review of the subcommittee transcript.

**BENNIE G. THOMPSON**  
SECOND DISTRICT, MISSISSIPPI

DEMOCRATIC WHIP  
REGION 7

WASHINGTON OFFICE  
1408 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-2402  
(202) 225-5876  
FAX: (202) 225-5898

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-2402

COMMITTEE ON AGRICULTURE  
SUBCOMMITTEES:  
GENERAL FARM COMMODITIES  
DEPARTMENT OPERATIONS, NUTRITION,  
AND FOREIGN AGRICULTURE  
COMMITTEE ON SMALL BUSINESS  
SUBCOMMITTEE:  
GOVERNMENT PROGRAMS

*Bennie G. Thompson*  
*Testimony*

Mr. Chairman and members of the Subcommittee on Reform and Oversight.

I am pleased to participate in this hearing today regarding the Federal Government shut down. As you may know, I represent the Second Congressional District of Mississippi.

I appear before you today on behalf of over nine-hundred Mississippi State employees as well employees from other states and U.S. territories, who were furloughed from November 14-19, 1995 due to the inability of the Congress to take care of the nation's business. As you know, Congress passed on November 20 1995, HJ Resolution 122, which included language to cover federal employees furloughed as a result of the lapse in appropriations. However, this resolution did not include similar language to cover state employees who carry out Federal programs. Most federal agencies provide funds to States through grants which finance either an entire project or program costs for a defined period of time. This resulted in

☐ 187 WEST MADISON STREET  
BOLTON, MS 39041  
(601) 866-9003  
FAX: (601) 866-9036  
IN ST: (601) 355-9003

☐ 509 HIGHWAY 82 WEST  
GREENWOOD, MS 38930  
(601) 455-9003  
FAX: (601) 453-0118

☐ 910 COURTHOUSE LAKE  
GREENVILLE, MS 38701  
(601) 335-9003  
FAX: (601) 334-1304

☐ OUTMAN CO. COURT HOUSE  
335 PLAZA STREET  
MAKERS, MS 38648  
(601) 328-9003

☐ MOUND BRAYON CITY HALL  
ROOM 134  
106 WEST GREEN STREET  
MOBILE BRAYON, MS 38707  
(601) 741-9003  
FAX: (601) 741-9002

these employees not getting paid for the time they missed work and many much needed services were interrupted.

In Mississippi, Rehabilitation Counselors were unable to authorize services and the needs of their clients went unmet. Blind residents at the Addie McBryde Center and mentally retarded residents at the Ellisville Center for the Mult-Handicapped Blind were sent home. Applications for Social Security Disability and Supplemental Security Income were not processed, thus delaying benefits for those who qualify. As you can see, this shut down had a major impact on my state of Mississippi as well as the nation. Therefore, I introduced H.R. 2733, which is designed to provide clarification in the reimbursement to States, such as Mississippi, for federally funded employees carrying out Federal programs during the lapse in appropriations between November 14, 1995, through November 19, 1995. I urge you, my colleagues, to support this legislation to reimburse the states for the money they use to compensate state employees during the government shutdown. These men and women are honest hardworking Americans caught in the cross-fire of this unfortunate budget battle. Let us make amends and provide the leadership that we were sent here to provide.

Thank you, Mr. Chairman and members of the committee for this

opportunity to testify before the Committee on Government Reform and Oversight.

CHAIRMAN  
JOHN A. BOEHNER  
8TH DISTRICT, OHIO

VICE CHAIRMAN  
SUSAN MOLINARI  
13TH DISTRICT, NEW YORK

SECRETARY  
BARBARA VUCANOVICH  
20 DISTRICT, NEVADA



ROOM 1010  
LONGWORTH HOUSE OFFICE BUILDING  
202-225-4107

**House Republican Conference**  
**U.S. House of Representatives**  
**Washington, DC 20515**

**Testimony of the Honorable John Boehner**  
**on Government Shutdowns Before**  
**the Civil Service Subcommittee**

**Thursday, December 14, 1995**

Mr. Chairman and colleagues, as a member of the House Republican Leadership, I appreciate having the opportunity to appear before this subcommittee.

Not since 1969 -- the year Neil Armstrong walked on the moon -- has Congress balanced the federal budget. Since that time, every mechanism and Washington gimmick devised to slow the growth of the federal bureaucracy has either been resisted or failed. During the 1980s, the Democrat-controlled Congress appropriated beyond the Reagan budgets and resisted at every turn controlling the size of government. In other words, Congress talked a good game but lacked both the will and the courage to make the decisions necessary to balance the budget. Consequently, we have mortgaged our children's future.

There is no excuse for the failure on the part of previous Congresses to balance the budget. If this great country of ours has the ability to put a man on the moon, it certainly can muster the type of leadership needed to balance its books. As the November 1994 elections demonstrated, the American people agreed it was time to replace the old team that had occupied the field for 40 years and bring in a new starting lineup.

The new team in Congress shares the American people's commitment to a seven-year balanced budget -- as promised in the *Contract with America*. Although past Congresses promised a balanced budget, it will take the Republican-led 104th Congress to keep that promise.

As the prospect of another partial government shutdown looms at 12 o'clock midnight tomorrow, it is imperative that everyone have a realistic understanding of what this is all about. It's about our desire to balance the budget, make government smaller, and provide a brighter and more prosperous future for our nation's children. Despite what others have said, it is not about anyone's desire to close the government and create anxiety among federal employees. Far from it.

It is also about what would happen if we don't balance the budget. Interest rates have steadily declined since last November because the markets believe we are serious about a balanced budget. They will almost certainly rise again if we fail.

We now face the possibility of another partial government shutdown because President Clinton doesn't share this Congress' commitment to an honest and believable balanced budget in 7 years. Of course, President Clinton has promised to balance the budget on numerous occasions.

While campaigning for president, Bill Clinton promised to balance the budget in 5 years. This June he said he could do it in 10 years. And then 9 years. And, finally 3 weeks ago he signed Public Law 104-53 that clearly and unmistakably states that the White House and Congress shall enact a seven-year balanced budget using CBO's honest numbers by the end of this session of the 104th Congress.

But the President's actions speak louder than his words, confirming what many Americans already know: it's much easier to make promises than to keep them. To date, the President has submitted three budgets to Congress. Not one of them ever balances. When presented with a fair, credible balanced budget plan, he chose the "veto pen" over the "balancing pen." And he chose demagoguery over honest debate.

The President has had more than ample time to produce a balanced budget plan that does not rely on rosy economic scenarios. But he hasn't done that. Instead, his third budget not only won't balance in 7 years, but it never wipes away the red ink. A \$365 billion shortfall and a \$115 billion deficit in 2002 do not balance the budget in 7 years.

By leaving a trail of red ink as far as the eye can see, the President is wilfully choosing to saddle our children with higher debt and, inevitably, higher taxes and a lower standard of living. For the sake of our children and their futures, Congress can no longer tolerate this fiscal child abuse.

So if parts of the government shut down at midnight tomorrow, it will be due to the President's refusal to put big government on a diet. The balanced budget plan that President Clinton vetoed last week would have spent \$2.5 trillion more during the next 7 years compared to the previous 7 years. The President, however, doesn't believe \$2.5 trillion more is enough. He wants to spend more.

Let's face it. This administration wants more Washington spending. We want to move power and money back to families and communities. That's really what the last government shutdown was all about. But rather than focus the debate on this moral imperative, the administration instead chose to score political points with constituencies that would be adversely affected by a shutdown. What else could possibly explain why government services that actually help people were disrupted, while the Washington bureaucracy was insulated as much as possible from the shutdown's impact? We cannot dismiss this as simply a mere coincidence.

There should be no doubt in anyone's mind that the previous shutdown didn't have to be as severe as the Clinton Administration made it. Social Security, civil service, and veterans benefits shouldn't have been treated differently. But they were. The Education Department's forward-funded programs should have continued. But they didn't. OSHA workplace safety and mine safety should have been treated the same. But they weren't.

I am pleased to hear that the Administration now recognizes that it unnecessarily worsened the effects of the shutdown, and will now alter its contingency plans for any future shutdowns. But rather than plan for future shutdowns, the Clinton Administration can help avoid them altogether by joining this Congress in reaching a an honest seven-year balanced budget agreement. The future of our children ought to take precedence over the special interests' insatiable appetite for bigger government and higher taxes. That's what this balanced budget battle is all about.

I have said it many times before and I'll say it again: No more excuses, Mr. President. No more Washington gimmicks. It's time to do the right thing for our children's future. It's time to balance the budget.

JOHN E. ENSIGN  
1ST DISTRICT, NEVADA  
—  
COMMITTEE:  
WAYS AND MEANS  
SUBCOMMITTEE ON HEALTH  
AND HUMAN RESOURCES



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-2801

WASHINGTON OFFICE:  
414 CANNON HOUSE OFFICE  
BUILDING  
WASHINGTON, DC 20515  
(202) 225-5965  
  
LAS VEGAS OFFICE:  
1000 E. SAHARA AVE., SUITE D  
LAS VEGAS, NV 89104  
(702) 731-1801  
  
HENDERSON OFFICE:  
223 LEAD ST., RM. 100  
HENDERSON, NV 89015

December 14, 1995

**TESTIMONY OF REPRESENTATIVE JOHN ENSIGN**

**Government Reform and Oversight Subcommittee on Civil Service**

Thank you, Mr. Chairman, for scheduling this hearing so that this and other testimony can be heard to help address the question of what federal government services and positions are essential during periods of shutdown. I strongly believe that there were many aspects of the shutdown in mid-November for which previous Congresses had failed to develop a strategy or appropriately consider.

My Resolution, H Con.Res. 113, is quite clear and very simple. The Resolution states that the President, Vice-President, and all Members of Congress should not except pay from the government during periods of shutdown. Shutdowns have happened in the past and will likely happen in the future, causing disruption and financial pressure on federal employees across the country. In order to lead by example, both Executive and Congressional leaders must be willing to make the same sacrifices as other federal employees.

Some of my colleagues have joined me in offering legislation that aims to remove the special pay protection for the President and Congressional Members during periods such as shutdowns. Language in both Article I, Section I and the 27th Amendment to the U. S. Constitution stipulating that pay for the President and Members, respectively, cannot be varied during the period of the individual's present term in office. Because of the legal and legislative questions regarding changing compensation rules, I considered it important to let my constituents know, both federal employees and others, that I was voluntarily holding myself to the same standards to which other federal employees were being held in matters of pay.

I support legislation that endeavors to remove these protections in the future, but believe my bill addresses the immediate question of Presidential and Member pay in the 104th Congress. I believe voluntary compliance is necessary until such a time when the constitutional questions can be properly addressed.

Thank you, Mr. Chairman.

Mr. MICA. I would now like to proceed. It is the practice of our subcommittee to ask our witnesses to summarize their remarks, if they could, in 5 minutes, to be fair to everyone, also to allow for questions. If you have a lengthy statement, it will be made a part of our full record.

I would like to take a moment to recognize Mrs. Bachus who has joined us. Good to see you. You haven't been before our subcommittee.

The second order would be to recognize her husband, the Hon. Spencer Bachus, who is on the Banking Committee and has requested testimony today.

Mr. Bachus, you are recognized for 5 minutes.

**STATEMENTS OF HON. SPENCER BACHUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA; HON. PETER HOEKSTRA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; HON. KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. BACHUS. Thank you, Mr. Chairman. It's a pleasure to come before the committee.

First of all, I want to stress that I think that the government shutdown, the debt ceiling crisis, the balanced budget debate, all of these may appear to be distinct items, and sometimes we say, "We're dealing with the debt ceiling; we're not dealing with the balanced budget," or "We're dealing with the government shutdown." But they are all interwoven.

Had we had a balanced budget, we would not have had a debt ceiling crisis. In fact, this Congress has sent two opportunities to the President to raise the debt ceiling, but they were linked with a balanced budget. As long as we continue to not balance the budget, as long as we continue, we're going to bump up against a debt ceiling, and we're going to have government shutdowns. Now, they may be the week before Christmas, or they may be when this country has an economic calamity and we simply run out of money.

I want to tie that with something that several people on the floor of the House today said this is nothing to concern us about; this is not anything to get all excited about—in fact, they said that the bill that just passed the House—and I don't have the vote count, but as I left I think there were less than 100 no votes; when it finally came up for a vote, there were 60-some-odd or 70 people voting present—was to say that these trust funds are off limits.

What I would like to say, if nothing else, is that this is serious, what's happening to the civil service trust fund and the voluntary pension fund of Federal employees. This is not something that we should look the other way on. This is not something that we ought to say they will be paid back with interest. Because, quite frankly, we can't make that promise. We can't look into the future and say that money will be paid back.

What we do know is that the Secretary of the Treasury has taken an unprecedented step in this Congress and during our watch. And what he has done is, he has reached in—he's done two things, initially. The first thing he did was, he reached into the

Civil Service Retirement Fund and he took from it almost \$40 billion in interest-bearing Treasury securities.

And he substituted—and he was before the Banking Committee yesterday, and I characterized it as substituted an IOU for those interest-bearing Treasury securities that he took out of the Civil Service Retirement Fund. And he said, “That’s correct.” He did not disagree with that analogy.

Now, as I said, some have said, “Well, that’s got to go back, at some point, with interest. Got to be paid back.” But he took it out, \$40 billion, and then he did something else. Every day the voluntary pension plan, the so-called “Thrift Savings,” or G fund, every day that is reinvested at the best available rates, only during this crisis it has not been reinvested. It is not invested; it is not drawing interest.

The entire pension plan that many of us in this room have voluntarily put money into, Federal employees, 100 percent Federal employees, that’s not drawing interest. For people to continue to say, 1 day, someday it will be paid back, maybe it will, but what interest rate will we get? Are we guaranteed, the people that put money in there for their retirement, hoping to get it when they retired, with interest as it grew, have we been guaranteed that they will get the best available rates? No.

Can we, can any of us guarantee that some Congress in the future won’t say, to balance the budget or under some austerity program, “We’re going to give it back, but we’re going to give it back at 4 percent.” If you look over the last 200 years of this country, when you start looking for things to do, one of the first things you do is, when you say, “I owe you this; let’s compromise at that.”

We have a stock market at an all-time high, but we don’t know that 2 months from now it may not be 2,000 points lower and interest rates a point or two higher, and our ability to finance all this basically shot.

Now, the Secretary of the Treasury did something else, he said, “There’s going to be a 12-month debt crisis.” And he took from the Civil Service account 12 months of benefits for Federal retirees. What did he do with that? Did he pay benefits to those retirees? No. He used it to fund the day-to-day operation of this government.

Those of us, you know, who are alarmed by this are simply shocked that people are saying, “No big deal. You took interest-bearing Treasury securities out of the retirement funds; you totally drained one of the accounts. That’s no big deal.”

My gosh, isn’t a retirement fund, as then Senator Al Gore said on August 1, 1986, almost 10 years ago, “This is a dedicated trust fund, and it ought to be used for one thing and one thing only, and the Federal employees ought to have that expectation and trust, and that’s that it be paid 1 day for their retirement, not to address a debt ceiling crisis, not to pay government.”

We used it for the day-to-day operation of government, and people are continuing to say, “No big deal.” I say it is a big deal. It just shows us, if nothing else, can we not all agree this is no way to run a government. When we have seen private pension plans dipped into, we have been excited about that. Aren’t our Federal employees entitled to the same respect? Is not their retirement fund entitled to the same respect?

The best statement I've seen on this is the statement of then Senator Al Gore, and I would submit his entire statement for the record, and simply say, a trust fund where there is no trust and there are no funds, is no trust fund.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Spencer Bachus follows:]

STATEMENT OF THE HONORABLE SPENCER BACHUS  
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE  
OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE  
December 14, 1995

Chairman Mica:

I appreciate the opportunity to come before the Subcommittee to discuss the recent government shutdown and the related raid by the Clinton Administration upon the Civil Service Retirement & Disability Fund and the G-Fund.

These actions, although seemingly distinct, are in my mind intricately related. The budget dispute, the shutdown, and the so-called debt ceiling "crisis" are all part and parcel of the historic struggle to curtail deficit spending. There should be no confusion. The government shutdown and the recent debt ceiling incident occurred solely because we do not have a balanced budget.

I would like to speak to how the recent actions by Treasury fit within the budget debate.

PRESIDENT CLINTON IS NOT SERIOUS ABOUT A BALANCED BUDGET

On November 15, Secretary Rubin made the following determination:

"Based on the information that is available to me today, and pursuant to my authority under 5 USC sec. 8348 (j)(5)(B), I hereby determine, for purposes of 5 USC sec. 8348 (k)(2), that there exists a debt issuance suspension period from today until 12 months from today."

By doing so, Rubin borrowed funds equal to the pension payments for federal retirees for 12 months -- one whole year -- and is now spending that year's worth of retiree benefits on the general obligations of the U.S. government.

While there have been two dozen debt ceiling "incidents" in the last 15 years that have resulted from struggles between the Executive and Legislative branch, this raiding of the retirement trust fund and the G-Fund was not simply business as usual. In the past, Treasury has redeemed trust fund assets simply to pay beneficiaries or to bridge a short term debt ceiling crisis; in this instance, the Treasury has taken the unprecedented step of redeeming a full year's worth of retirement benefits in order to fund its own political objectives. I am among those who strongly question the legality of using these funds for the payment of general government obligations.

What does this 12 month debt suspension determination tell us about the Administration's views of a balanced budget? Could it be that 12 months would get Secretary Rubin and the Clinton

Administration just past the November 5, 1996 presidential elections? Could it be that Bill Clinton has no intention of negotiating in good faith on a 7 year balanced budget, despite the fact that he has publicly committed to a balanced budget many times over the past few years? At a minimum, Rubin's determination of a 12 month debt issuance suspension period was a transparent move to raise funds with which to maintain government spending so that President Clinton could avoid coming to the table and negotiating a balanced budget.

Did President Clinton have to do this? The answer is a very clear NO. First, the President never considered deferring or rescinding spending in order to avoid hitting the debt ceiling. Rather, it was pedal-to-the-metal spending as usual.

Second and more tellingly, the Congress sent President Clinton two debt ceiling increases. The President vetoed both increases because they require a concrete, no "smoke and mirrors", balanced budget. Let me say again: if we have a balanced budget, we would not be here today.

#### THE NEED FOR CONGRESSIONAL CONTROL OVER THE DEBT

It is time that we take a quick look at the United States Constitution. Article I, Section 8 provides: "The Congress shall have power . . . To borrow Money on the credit of the United States . . ."

That's right -- it is Congress -- not President Bill Clinton, not Secretary Robert Rubin -- that determines when we spend today the money our children will earn tomorrow. Although some would argue the debt ceiling statute is obsolete, the statute, if nothing else, is useful as a reminder of the profligate deficit spending that has been the sorry legacy of our government. But beyond its symbolic significance, I think the debt ceiling statute is fundamental to Congress's constitutional authority over public debt -- if we close the loopholes like the one used by the Treasury Department.

President Clinton's unprecedented use of the trust funds stands this authority on its head. As Secretary Rubin admitted in testimony yesterday before the House Banking Committee, when the Treasury dipped into the trust funds it simply used creative accounting to find a way to continue deficit spending.

For the past 29 days, the loophole used by Secretary Rubin has resulted in the obligation of over \$60 billion of our money without Congressional approval. That is equal to \$244 for every man, woman and child in the United States. If he used all the \$1.26 trillion in federal trust funds, Secretary Rubin could deficit spend until the year 2001. This would cost each of us over \$5,000 over the current \$4.9 trillion national debt.

President Clinton may be happy about piling this debt on

each of us but the American people should not be subjected to this burden without Congressional approval.

#### ITS TIME TO CLOSE THE LOOPHOLES

Remember the ESF fund. The Exchange Stabilization Fund exists for the limited purpose of meeting our goals to the International Monetary Fund but had been used over the years to make small, short term loans in emergency situations. It was probably a very useful tool for the Treasury Department. This obscure fund was tapped by President Clinton, however, in an unprecedented fashion to loan \$20 billion to Mexico for up to 10 years, without obtaining Congressional approval.

Just as Congress took steps to curb this abuse of the ESF fund, we now need to take steps to curb the recent abuse of federal trust funds. Although some flexibility in regard to the trust funds may very well be a good thing, the precedent set by President Clinton in abusing his authority over the trust funds necessitates that we act to restore confidence in the sanctity of all trust funds and to restore Congressional control over the federal debt.

H.R. 2621 that is scheduled for floor action today is a necessary step in restoring confidence in the sanctity of our trust funds. I would like to read excerpts from a floor statement made by a Senator during debate in 1986 on an amendment to the Civil Service Retirement and Disability Fund statute that was designed to do exactly what H.R. 2621 does -- prevent the Treasury from raiding the fund to pay general government obligations.

Like the Social Security Trust fund, the civil service retirement and disability fund is a dedicated trust fund and as such its assets may only be used to provide benefits to civil service retirees . . . That fund stands as a strong symbol of assurance that federal employee retirement benefits will be paid when they become due. While employees may not fully understand the arcane interactions of Federal financing that results in the ultimate dispersal of their annuity checks, they do recognize when money that they have contributed toward the financing of their benefits have been used in ways other than those intended or promised under the statute establishing that fund. . . . It was right for them to take offense last year when the civil service fund was the first tapped -- even before Social Security disinvestment -- to keep the Nation solvent during the 1986 debt ceiling crisis. . . The amendment that Senator Eagleton and I propose would acknowledge, indeed would preserve, the sanctity of those contributions that these employees have made toward their retirement. (132 Cong. Rec. at 18,732-3.)

Who made that statement? Then-Senator Al Gore. Ten years

later, Senator Gore's statement remains the best explanation of why we need this bill -- to ensure that trust fund assets are used only for the purpose of the trust fund, not for general government obligations.

As Senator Gore stated, it is right for federal employees to take offense when the civil service retirement fund is used for political purposes. It is time that we protect the trust funds and restore Congressional control over the federal debt.

Thank you, Mr. Chairman.

UNITED STATES



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## CONGRESSIONAL RECORD—SENATE

August 1, 1986

AMENDMENT NO. 2368

(Purpose: To limit the authority to invest and disinvest assets in the Civil Service Retirement and Disability Fund.)

Mr. EAGLETON, Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER: The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. EAGLETON) for himself, Mr. GORE, Mr. LAYNE, and Mr. GLENN, proposes an amendment numbered 2368.

Mr. EAGLETON, Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER: Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, insert the following new section:

SEC. 31. CIVIL SERVICE RETIREMENT AND DISABILITY FUND.

(a) Investment and Restoration of the Fund.—Section 3348 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(XII) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if necessary to ensure that the public debt of the United States does not exceed the public debt limit.

"(3) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

"(4) Upon expiration of the debt insurance suspension period, the Secretary of the Treasury shall immediately issue to the Fund obligations under chapter 31, of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would be held by the Fund if the debt insurance suspension period had not occurred.

"(4) On the first normal interest payment date after the expiration of any debt insurance suspension period, the Secretary of the Treasury shall pay to the Fund, from accounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

"(A) the net amount of interest that would have been earned by the Fund during such debt insurance suspension period if—

"(i) amounts in the Fund that were not invested during such debt insurance suspension period solely by reason of the public debt limit had been invested, and

"(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt insurance suspension period solely by reason of the public debt limit had not occurred, over

"(B) the net amount of interest actually earned by the Fund during such debt insurance suspension period.

"(5) For purposes of this subsection and subsections (3) and (4) of this section—

"(A) the term 'public debt limit' means the limitation imposed by section 3101(b) of title 31; and

"(B) the term 'debt insurance suspension period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to orderly conduct the financial operations of the United States may not be made without exceeding the public debt limit."

(b) Sales and Redemptions by the Fund.—Section 3348 of title 5, United States Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(k) The Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund only for the purpose of enabling the Fund to make payments authorized by the provisions of this subchapter or chapter 34 of this title or related provisions of law. If the Fund holds any amounts which, by reason of the public debt limit, are not invested, the Secretary may nevertheless make such sales and redemptions if, and only to the extent, necessary to ensure that such payments are made in a timely manner."

(c) Reports Regarding the Operation and Status of the Fund.—Section 3348 of title 5, United States Code, as amended by subsection (a) and (b), is further amended by adding at the end the following new subsection:

"(XIII) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt insurance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (1) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

"(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing."

Mr. EAGLETON, Mr. President, earlier the Senate passed a Finance Committee amendment protecting the Social Security Trust Fund from disinvestment during panic months such as this, when the Government is, so to speak, on the brink of bankruptcy. Senators GORE, LAYNE, GLENN, and I are offering an identical amendment—protecting the civil service retirement and disability fund—from hasty quick-fixes which undermine the financial integrity and public confidence in Federal trust funds.

The civil service retirement and disability fund, the fund which contains Federal employees' retirement contributions, has \$126.4 billion invested in Treasury securities. According to the General Accounting Office, on three occasions since 1964, the Treasury has manipulated the civil service retirement and disability fund by taking "unusual actions in an attempt to manage the Government's finances." During fiscal years 1964, 1983, and 1984 the Treasury departed from

normal procedure in handling the fund's investment in two ways: First, it delayed investment of fund receipts and, second, it prematurely redeemed some of the funds securities. GAO estimates as a direct result of that action, the fund lost tremendous interest earnings.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing the figures.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Fiscal year:	Interest amount lost
1964.....	\$62,231,813
1983.....	79,231,138
1984.....	6,056

Total.....\$141,458,957

Mr. EAGLETON, Mr. President, Treasury has restored \$77,774—more drop in the bucket; \$141,458,957 in interest belonging to civil service retirees is lost. The Treasury is not entirely to blame. The laws instructing the Secretary of the Treasury regarding trust funds and the Federal debt conflict. With our amendment, we clarify our intent—the money put away in good faith by retirees must be there in full.

The purpose of this amendment is to both modify and clarify the authority of the Secretary of the Treasury in connection with his responsibilities for investing the assets of the civil service retirement and disability fund. Specifically, the amendment would allow the Secretary to temporarily suspend additional investment of the fund's assets when such investments would otherwise result in the public debt limit being exceeded.

Furthermore, after such a suspension, the Secretary would be required: First, to reimburse the fund for any investment lost as a result of the suspension; and, second, to invest uninvested assets of the fund in a manner which, to the extent practicable, would make the fund whole, as though such suspension never occurred.

Moreover, the amendment would allow the Secretary to disinvest assets of the fund when the fund is holding uninvested assets due to the public debt limit, but only when necessary to ensure timely payment of amounts authorized to be made from the fund.

Mr. GORE, Mr. President, Federal employees earn, as part of their compensation package, retirement benefits payable through the civil service retirement and disability trust fund. Like the Social Security trust fund, the civil service retirement and disability fund is a dedicated trust fund and as such, its assets may only be used to provide benefits to civil service retirees.

That fund stands as a strong symbol of assurance that Federal employee retirement benefits will be paid when

August 1, 1986

## CONGRESSIONAL RECORD—SENATE

18733

they become due. While employees may not fully understand the arcane interactions of Federal financing that result in the ultimate dispersal of their annuity checks, they do recognize when money that they have contributed toward the financing of their benefits have been used in ways other than those intended or promised under the statute establishing that fund.

It was right for them to take offense last year when the civil service fund was the first tapped—even before Social Security disinvestment—to keep the Nation solvent during the 1986 debt ceiling crisis.

GAO determined that such raids by the Department of Treasury has lost the civil service retirement and disability trust fund interest earnings because "Treasury did not follow its established fund management procedures." GAO's investigation determined that Treasury delayed investment of fund receipts, prematurely redeemed some fund securities, and "took other unusual actions in an attempt to manage the government's finances."

The losses total \$141,459,007.

## Fiscal year:

1984	\$62,321,813
1985	79,231,138
1986	6,096

The amendment that Senator Eagleton and I propose would acknowledge, indeed would preserve, the sanctity of those contributions that these employees have made toward their retirement.

By treating these contributions and the Government's share of retirement pension costs as usable only for the payment of civil service retirement and disability benefits, the Congress will be restoring the confidence that has undergone severe strain over the past few years.

Congress has been active in Federal employee retirement. There have been a never-ending stream of proposals from the administration to cut Federal employee benefits, particularly civil service retirement. In fact, Congress has found it necessary to suspend or modify cost-of-living adjustments in response to serious fiscal concerns.

New Federal employees have been covered by Social Security, an event that Federal retirees and employees had long feared would merely be a pretext for seizing the assets of the civil service retirement trust fund to re-finance the financing of Social Security.

Although it was not Congress' intent, the Social Security amendments did require Congress to develop a complete new retirement plan for Federal employees. While that work is completed, and those of us who participated in that development are proud of that achievement, Federal employees and retirees are understandably anxious that their retire-

ment expectations remain threatened when they see their cost-of-living adjustments reduced because of budgetary concerns and their retirement funds used to pay obligations other than those intended.

Is it any wonder, then, that our country's present and former employees fear the worst. This amendment places the Federal employees' trust fund on the same footing as the Social Security trust funds, as a backstop for the benefits of the rest of the Nation's employees. It is the least we can do. It is the right thing to do. Our Federal workers deserve it.

Mr. HEINZ. Mr. President, I am advised that there is no objection to the amendment on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2263) was agreed to.

Mr. EAGLETON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent that Senator Hollings and Senator Grassley be added as cosponsors to the pending amendment No. 2262.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent that we temporarily lay aside the pending amendment to consider an amendment to be offered by the Senator from South Dakota.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABDNOR. Mr. President, I thank the Senator from Pennsylvania.

AMENDMENT NO. 2264

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. Abdnor) proposes an amendment numbered 2264.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the committee amendment, as amended, add the following new section:

SEC. . Notwithstanding any other provision of law,

(a) the Secretary of Agriculture shall reimburse farmers or ranchers for the cost incurred by such farmers or ranchers for transporting hay during the period July 1, 1983, to June 1, 1986, as a result of a natural disaster caused by flood, excessive moisture, or drought;

(b) The Secretary shall reimburse such farmers or ranchers in an amount which does not exceed 80 percent of the cost of such transportation (but not to exceed \$50 per ton);

(c) The Secretary shall carry out the provisions of this through the Commodity Credit Corporation.

SEC. . Section 22(b)(1) of Public Law 99-249 is amended by deleting "40 percent of the projected payment rate" and inserting in lieu thereof "100 percent of the projected payment rate".

SEC. . It is the sense of Congress that with respect to farm and ranch borrowers who were adversely affected by drought disaster in 1985 or flood disaster in 1985 and 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forego foreclosures in cases where such farm and ranch borrowers are unable to make loan payments in full due to no fault of their own; and

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

Mr. ABDNOR. Mr. President, I think both managers here on the floor are well aware of this amendment. I discussed it earlier as a possible amendment to the Sasser amendment.

It was determined at that time to propose my amendment as a standing amendment.

I ask immediate consideration of the amendment.

Let me say this for those who were not here: This amendment covers the drought in South Dakota during 1986 and the flooding during 1986. In terms of dollars it is quite minor.

Mr. PRYOR. Mr. President, reserving the right to object, it is my understanding that the Senator from South Dakota is offering an amendment that he discussed earlier in this day relative to drought—specifically related to South Dakota.

Mr. ABDNOR. Yes, and the flood as well. It may seem unusual but it is possible in South Dakota to have a flood in the East and a drought in the West.

Mr. PRYOR. Let me say to my distinguished friend from South Dakota it is my understanding at this point there are Members on this side, or at

Mr. MICA. Thank you, Mr. Bachus.

Mr. MORAN. Mr. Chairman, could I just make a quick comment on that?

Mr. MICA. Yes, you may.

Mr. MORAN. Thank you. I just wanted to mention and emphasize the fact that this policy was requested by President Reagan's Secretary of the Treasury and enacted by President Reagan. In that legislation that he enacted, it guarantees that those funds will be fully reimbursed, and this is exactly what was envisioned by that legislation. So I just wanted to add that.

Mr. BACHUS. If I could respond to the gentleman from Virginia.

Mr. MICA. To be fair to the other panelists, and rather than get into debate at this time, it is the custom of the subcommittee to go through the panel and then come back.

Mr. BACHUS. But I would love an opportunity to discuss that with you. There are several misconceptions about that, and that's one of them. I would be glad to go through the record with the gentleman and tell you that we could debate that. We might come to different disagreements, but I think we all agree the money shouldn't be used as it's being used. It's a retirement fund.

Mr. MICA. Well, I allowed the ranking member to comment and you to respond.

Mr. BACHUS. And I'm not sure Federal employees care how it happened.

Mr. MICA. We will come back to this later. It is a bone of contention and it needs to be discussed, but at this point I am going to yield. We have all afternoon. There are no votes into dinner.

We will now recognize Mr. Hoekstra, who chairs the Oversight and Investigations—wait a second. I apologize. It's alphabetical, and it's Mr. Calvert.

Were you sworn in beforehand?

Mr. CALVERT. No problem.

Mr. MICA. OK. Well, I want to be perfectly fair.

Mr. Calvert, alphabetically, who chairs the Resources Committee's Subcommittee on Energy and Mineral Resources, you are recognized for 5 minutes.

Mr. CALVERT. Thank you, Mr. Chairman. Before I read my testimony, I have some additional documents I would like to submit for the record.

Mr. Chairman, distinguished members of the subcommittee, thank you for the opportunity to testify today on the issue of which government services employees should be considered essential during a Federal Government shutdown. Like every Member of Congress, I have heard the gamut from my constituents, from the notion that all or nearly all Federal employees are not essential in their day-to-day lives to the view that most everyone is necessary to the Federal Government's operation. I think it's obvious the answer probably lies somewhere in between, but just where?

Your hearings on this matter are useful to those who are truly interested in streamlining the government to a workable size, when it is up and running, let alone when a limitation on appropriated funds causes a so-called "shutdown."

Let me add, Mr. Chairman, that this is not hollow rhetoric for me, for, in a sense, I've given at the office. By this I mean, as chair-

man of the Subcommittee on Energy and Mineral Resources of the Committee on Resources, I chair the authorizing panel for no less than six Federal bureaus or parts thereof: the U.S. Geological Survey, the Bureau of Mines, the Bureau of Land Management, the Minerals Management Service, the Office of Surface Mining, and Geology and Minerals program areas of the U.S. Forest Service.

However, as of January 8, 1996, the U.S. Bureau of Mines will cease to exist, albeit a small fraction of its former budget authority to transfer to the USGS and DOE. Mr. Chairman, I'm not crowing about this accomplishment. In reality, it's a manifestation of the appropriation process, but I'm realistic about prioritizing budget needs and understand the pressures of the Secretary of the Interior to choose not to defend this agency when faced with cuts of the magnitude required this fiscal year and for many years to come. So my subcommittee's turf has been impacted, as will many others as our reforms prevail.

As to the issue of essential services during shutdown periods, I would like to simply highlight a few instances which I'm familiar with, from the perspective of the Energy and Mineral Resources Subcommittee jurisdiction. One of the agencies I mentioned earlier, the Minerals Management Service, or MMS, trails only the Internal Revenue Service and possibly the U.S. Customs Service as a net revenue source for the Federal treasury.

Why? Because the MMS is the collector of some \$4 billion annually in mineral royalties for Federal and Indian lands and the outer continental shelf, the OCS. It is my understanding the shutdown last month did not prevent the MMS from collecting royalties, much of which is done by electronic funds transfer today.

But another job of MMS is to permit OCS drilling operations, and, of course, if such permitting is stalled, then so is the potential for discovery and production of oil and gas that is the source of those billions of annual revenues, not to mention the hundreds of thousands of dollars per day of idle rig costs for lessees awaiting a permit.

I am aware of one instance involving a small independent producer who was delayed startup production for several days. While this may not be a significant loss to the Federal Government, because the royalty interest will eventually be recovered, for a small businessman the cash-flow impact is a significant interruption of his ability to conduct business.

I have asked Secretary Babbitt to provide me with copies of Interior Department guidance for bureaus engaged in energy and mineral resource activities so the subcommittee might review the adequacy of shutdown plans, especially from the health and safety viewpoint, but also from the environmental and Federal revenue generation angles.

Let me add, Mr. Chairman, that I'm actively pursuing royalty fairness legislation to amend Federal mineral leasing laws to allow States to enter into agreements with the Secretary of the Interior to take on additional royalty collection duties with their borders and some "upstream" activities that the Bureau of Land Management, or BLM, currently does with respect to lease inspection and enforcement.

During the recent shutdown, an onshore oil and gas lessee in New Mexico encountered a situation concerning loss of drilling fluids downhole and possible contamination of freshwater aquifers while awaiting necessary approval of emergency measures. But no one was at home at the BLM office, no one. Ultimately, the lessee took the responsible action to prevent contamination but was left in a position of begging forgiveness rather than asking permission.

In support of my bill as part of the Balanced Budget Act, a bipartisan coalition of 10 western Governors has written to President Clinton strongly urging that royalty fairness provisions, which would allow but not require broader participation by these States, should remain in a negotiated balanced budget. In other words, the agenda of the 104th Congress to empower the States is alive and well in Chairman Don Young's Committee on Resources, including within my subcommittee.

Mr. Chairman, let me provide another example of the November shutdown effect upon issues in my subcommittee's purview. A mining company attempting to permit a proposed expansion of an existing mining operation on public lands through the local BLM office in Battle Mountain, NV, has basically been told that the 4½-day furlough of nonessential employees will mean a delay of an additional month or more for the review and sign-off on a third-party-prepared EIS.

The plan of operations has been pending since October 1992, which a construction work force of 175 people and an increase of permanent mine employees of 75 to 100 wait and wait. But the shutdown of BLM was the rationale for yet another slippage of the expected EIS completion data, at a rate of 6 days delay for each day of furlough. Our subcommittee will ask for explanation of this behavior, because it sounds as if the BLM employees consider the government effectively shut down, whether or not it technically is.

In summary, Mr. Chairman, I am dedicated to trimming the size and scope of the Federal Government, including those agencies under my subcommittee's jurisdiction. I stand ready to aid your efforts to better determine essential versus nonessential services and employees for programs we oversee, in the event of subsequent shutdowns of the Federal Government, should they become necessary.

This ends my prepared remarks. I have several documents, as I mentioned, I would like to submit for the record, and I look forward to answering your questions.

Mr. MICA. Without objection, they will be made a part of the record.

[The prepared statement of Hon. Ken Calvert and the information referred to follow:]

Statement  
of  
**The Honorable Ken Calvert**  
**Chairman, Subcommittee on Energy & Mineral Resources**  
**Committee on Resources**  
at the  
Oversight Hearing  
on  
**Essential Services During Federal Government Shutdowns**  
before the  
**Committee on Government Reform and Oversight**  
**Subcommittee on Civil Service**

December 14, 1995

Chairman Mica, and distinguished Members of the Subcommittee, thank you for the opportunity to testify today on the issue of which governmental services and employees should be considered "essential" during a federal government "shutdown".

Like every Member of Congress, I have heard the gamut from my constituents: from the notion that all, or nearly all, federal employees are non-essential in their day-to-day lives to the view that most everyone is necessary to the federal government's operation. I think its obvious the answer lies somewhere in between, but just where? Your hearings on this matter are useful to those of us truly interested in streamlining the federal government to a "workable" size when it is "up and running" let alone when a limitation on appropriated funds causes a so-called shutdown.

And let me add, Mr. Chairman, that this is not hollow rhetoric with me, for in a sense, I have "given at the office." By this I mean, as Chairman of the Subcommittee on Energy and Mineral Resources, of the Committee on Resources, I chair the authorizing panel for no less than six federal bureaus or parts thereof: the U.S. Geological Survey, the Bureau of Mines, the Bureau of Land Management, the Minerals Management Service, the Office of Surface Mining, and the Geology and Minerals program area of the U.S. Forest Service. However,

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Mr. Chairman, I'm not crowing about this accomplishment. In reality, its a manifestation of the appropriations process. But I am realistic about prioritizing budget needs and understand the pressures on the Secretary of the Interior to choose not to defend this agency when faced with cuts of the magnitude required this fiscal year and for many years to come. So my subcommittee's turf has been impacted, as will many others if our reform efforts prevail.

As to the issue of "essential services" during shutdown periods, I'd like to simply highlight a few instances of which I am familiar from the perspective of the Energy & Mineral Resources Subcommittee jurisdiction. One of the agencies I mentioned earlier, the Minerals Management Service, or MMS, trails only the IRS and possibly the U.S. Customs Service as a net revenue source for the federal Treasury. Why? Because the MMS is the collector of some \$4 billion annually in mineral royalties for federal and Indian lands and the Outer Continental Shelf - the OCS.

It is my understanding that the shutdown last month did not prevent the MMS from collecting royalties, much of which is done by electronic funds transfer today. But, another job of the MMS is to permit OCS drilling operations. And, of course, if such permitting is stalled, then so is the potential for discovery and production of the oil and gas that is the source of those billions of dollars of annual revenues, not to mention the hundreds of thousands of dollars per day of idle rig costs for lessees awaiting a permit. I am aware of one instance involving a small independent producer who was delayed start-up of production by seven days. While this may not be a significant loss to the federal government because the royalty interest will eventually be recovered, for a small businessman the cash flow impact is a significant interruption of his ability to conduct business.

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bureaus engaged in energy and minerals activities so that the Subcommittee might review the adequacy of shutdown plans, especially from the health and safety viewpoint, but also from environmental and federal revenue generation angles.

Let me add, Mr. Chairman, that I am actively pursuing "Royalty Fairness" legislation to amend federal mineral leasing laws to allow States to enter into agreements with the Secretary of the Interior to take on additional royalty collection duties within their borders and some "upstream" activities that the Bureau of Land Management, or BLM, currently does with respect to lease inspection and enforcement. During the recent shutdown an onshore oil and gas lessee in New Mexico encountered a situation concerning loss of drilling fluids downhole and possible contamination of freshwater aquifers while awaiting necessary approval of emergency measures. But, no one was at home in the BLM office, no one. Ultimately the lessee took the responsible action to prevent contamination but was left in the position of "begging forgiveness" rather than "asking permission."

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In summary, Mr. Chairman, I am dedicated to trimming the size and scope of the federal government, including those agencies under my subcommittee's jurisdiction. I stand ready to aid your efforts to better determine "essential" versus "nonessential" services and employees for programs we oversee, in the event of subsequent shutdowns of the federal government should they become necessary.

Mr. Chairman, this ends my prepared remarks. I have several documents to submit for the record which support the testimony I have presented. I appreciate the opportunity to appear before you today and would be happy to answer questions you may have.

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December 12, 1995

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 MEL ABENBACH, MINNESOTA  
 GERRY E. STODOL, MASSACHUSETTS  
 W. J. BILLY TOLSON, LOUISIANA  
 SOLOMON P. ORTIZ, TEXAS  
 OWEN B. PICKETT, VIRGINIA  
 FRANK PALLONE, JR., NEW JERSEY  
 CALVIN M. DODLEY, CALIFORNIA  
 CARLOS A. ROMERO BANCLO, PUERTO RICO  
 MAURICE D. HINCHY, NEW YORK  
 ROBERT A. UNDERWOOD, GUAM  
 SAN JUAN, CALIFORNIA

DANIEL WALSH  
 CHIEF OF STAFF  
 DAVID G. DYE  
 CHIEF COUNSEL  
 JOHN LAWRENCE  
 DEMOCRATIC STAFF DIRECTOR

The Honorable Bruce Babbitt  
 Secretary  
 Department of the Interior  
 1849 C Street, NW  
 Washington, DC 20240

Dear Mr. Secretary:

This letter serves as follow-up to phone contacts made last week by my staff to the legislative affairs staff of the Office of Surface Mining, Reclamation and Enforcement, the Minerals Management Service, and the Bureau of Land Management. The purpose of the inquiries was to obtain information from those bureaus concerning directives issued for the federal government shutdown November 13 - 20, 1995.

As you well know, companies operating under the jurisdiction of federal agencies are required to obtain approvals for standard and emergency operating procedures. It has come to my attention that an incident occurred during the shutdown which would qualify as an emergency operation, with threat to life or property, for which the operator was unable to obtain a timely or a final approval. In my view, these types of situations require immediate attention in order to minimize damage to human health or the environment, and timely approvals by the appropriate federal bureau are a necessary step toward that end.

In addition, I am aware of significant costs incurred by industry due to lack of personnel available to approve permits and other operational procedures. Such economic losses for those smaller companies with limited cash flow and resources may take months or years to recoup, if ever. I am aware of one case in which an independent oil producer was delayed starting production by seven days, which resulted in a deferral of revenues for the company and the federal government. It is my understanding that royalty collections continued uninterrupted during the federal shut-down. Although I fully support the government's right to collect what is rightfully owed the American taxpayer, I strongly urge you to allow these companies to operate so that future royalty streams are brought on-line without interruption.

I respectfully request full disclosure of all shut-down directives which delineate which energy and minerals activities within the Department will continue during a shut-down. I am specifically interested in the operational and emergency procedures and if any of these activities were coordinated with state authorities. Please include any changes made in response to lessons learned during the shut-down period in November.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Calvert", with a long horizontal flourish extending to the right.

KEN CALVERT  
Chairman, Subcommittee on  
Energy and Mineral Resources



## United States Department of the Interior

MINERALS MANAGEMENT SERVICE  
Washington, DC 20240

AUG 28 1985

To: Deputy Assistant Secretary - Human Resources  
/s/ Cynthia Quarterman  
From: Director, Minerals Management Service  
Subject: Emergency Shutdown Plan for Minerals Management Service (MMS)

Attached is a listing of Headquarters and field employees who have been determined by management to be essential on a continuing basis for activities related to the protection of life and property or essential on an interim basis to conduct an orderly shutdown of the MMS (Attachment 1). A list of on call employees is also included.

Specifically, essential Offshore employees will ensure drilling and production operations safety on the Outer Continental Shelf. Royalty Management employees will oversee termination of contract activity, shutdown of the computer center, and shutdown of the wide and local area networks. Both program areas are engaged in developing strategies for carrying out implementation plans at their respective locations. Administration and Budget is working closely with the Program managers in dealing with administrative issues, such as, contract services and personnel functions.

Administration and Budget employees will also deal with a myriad of essential shutdown responsibilities including shutdown of computer operations; notifying employees and processing personnel actions; running financial reports and securing sensitive files; building and property security, etc. for the Headquarters contingent.

Employees who have been designated as essential will be notified of their designation. Furlough notices will be prepared in advance and be ready for immediate issuance upon notification of the shutdown as outlined in our attached Agency checklist (Attachment 2).

Mr. Robert Vayda, Chief, Staffing and Classification Branch, and Mr. Robert Pope, Chief, Support Services Branch, will ensure that the appropriate shutdown of Bureau administrative and security functions, during the interim period, are carried out efficiently and effectively.

If there are any questions regarding this information, please call Debbie Brown, Personnel Officer, on (703) 787-1423.

Attachments

#### **Modification to Minerals Management Service Shutdown Plan**

The Minerals Management Service will retain four additional people on a continuing basis for activities relating to the protection of property. These activities will allow for the receipt and expeditious deposit of all monies sent to the Royalty Management Program. These monies include funds to be deposited into the Treasury and into Indian Trust Fund accounts.

In addition, the Minerals Management Service will retain one additional person on an interim basis to coordinate the bureau's shutdown operations. If the shutdown exceeds one week, this person will be retained further on an on-call basis.

**MINERALS MANAGEMENT SERVICE LIST OF ESSENTIAL EMPLOYEES  
FOR 1995 SHUTDOWN PURPOSES**

Employees are listed below in three categories:

1. Essential, on a continuing basis, for activities related to the protection of life and property.
2. Essential, on an interim basis, to conduct an orderly shutdown.
3. On call during the shutdown.

**1. EMPLOYEES ESSENTIAL, ON A CONTINUING BASIS, FOR ACTIVITIES RELATING TO THE PROTECTION OF LIFE AND PROPERTY.**

**Offshore Minerals Management**

**Gulf of Mexico OCS Region**

**Houma District**

District Supervisor (Michael Saucier)  
-to ensure drilling and production operations safety

**Lafayette District**

District Supervisor (Joe Gordon)  
-to ensure drilling and production operations safety

**Lake Jackson District**

District Supervisor (Ed Smith)  
-to ensure drilling and production operations safety

**New Orleans District**

District Supervisor (Lars Herbst)  
-to ensure drilling and production operations safety

**Pacific OCS Region**

**Santa Maria District**

District Supervisor (Phil Schroeder)  
-to ensure drilling and production operations safety

**Camarillo District**

District Supervisor (Rishi Tyagi)  
-to ensure drilling and production operations safety

**Essential for Continuous Operation - Total: 6**

1. EMPLOYEES ESSENTIAL, ON AN INTERIM BASIS, TO CONDUCT AN ORDERLY SHUTDOWN.

Office of the Director

Assistant to the Director (Robert Middleton)  
-to prepare the Director's files for storage

Office of Administration and Budget

Information Resources Management Division

Computer Specialists (Michael Blackwell, Larry Pease)  
-to shutdown computers at Herndon and MIB, respectively

Personnel Division

Chief, Staffing and Classification Branch (Robert Vayda)  
-to direct the orderly notification of employees and processing of personnel actions

Personnel Assistant (Terry Ballard)  
-personnel activities related to employee notification  
-personnel support activities related to the processing of actions

Financial Management Division

Chief, Accounting and Reports Section (Deborah Sykes)  
Systems Accountant (Marilou Barros)  
-to run trial balance and other necessary ABACIS reports  
-to secure all Sensitive files

Management Services and Security Division

Chief, Support Services Branch (Robert Pope)  
-to provide for building security, property, and facilities management

Southern Administrative Service Center

None

Western Administrative Service Center

Computer Specialist (Larry Turner)  
-to complete shutdown operations for the WASC LAN/WAN

Contracts Officer (Linda Bell)  
-to terminate contracts of contractors performing RMP operations, if needed

Alaska Administrative Satellite Office

None

California Administrative Satellite Office

None

**Offshore Minerals Management**Headquarters

Chief, Microcomputer Support Services, OMS (Patrick Maloney)  
 -to shutdown Offshore LAN

Alaska OCS Region

Computer Specialist (Jean Payne)  
 -to shutdown computer operations

Gulf of Mexico OCS RegionNew Orleans District

Computer Specialist (Michelle Griffitt)  
 -to shutdown computer operations

Pacific OCS RegionCamarillo District

LAN Coordinator (Barbara Pryor)  
 -to shutdown computer operations

**Royalty Management**Systems Management Division

Chief, Contract Management Branch (Steve Spizale)  
 -to oversee termination of contractor activities and coordinate  
 orderly shutdown of the computer center

Technology Planning Branch (Jim May and Alene Markoff)  
 -to oversee the orderly shutdown of wide and local area  
 networks

Essential (Interim) for shutdown  
 of non-essential operations - Total: 17

3. ON CALL DURING THE SHUTDOWN.**Office of Administration and Budget**Management Services and Security Division

Chief, Support Services Branch (Robert Pope)  
 -to provide for building and property security

Southern Administrative Service Center

Manager, Southern Administrative Service Center (Carl Sigler)  
 -to handle any emergency situations

Western Administrative Service Center

Manager, Western Administrative Service Center (Jan Fletcher)  
 -to handle any emergency situations

**Offshore Minerals Management**Headquarters

Associate Director for Offshore Minerals Management  
 (Tom Gernhofer)  
 -to handle any emergency situations

Deputy Associate Director for Offshore Operations  
 (Hank Bartholomew)  
 -to coordinate emergency communications between Regions and Headquarters

Alaska OCS Region

Regional Director, Alaska OCS Region (Judy Gottlieb)  
 -to handle any emergency situations

Gulf of Mexico OCS Region

Regional Director, Gulf of Mexico OCS Region (Chris Oynes)  
 -to handle any emergency situations

Regional Supervisor, Field Operations (Don Howard)  
 -to oversee required activities; to coordinate emergency communications between Districts and Region; and to provide necessary approvals of lessees' and operators' requests

Pacific OCS Region

Regional Director, Pacific OCS Region (Lisle Reed)  
-to handle any emergency situations

Regional Supervisor, Field Operations (Thomas Dunaway)  
-to oversee required activities; to coordinate emergency  
communications between District and Region; and to provide  
necessary approvals of lessees' and operators' requests

**Royalty Management**

Associate Director for Royalty Management (James Shaw)  
-to handle any emergency situations

On-call for emergency situations - Total: 11



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

IN REPLY REFER TO

SEP 26 1995

## Memorandum

To: State Directors  
Service Center Director  
Director, NIFC  
Director, National Training Center

From: *Laurence E. Bern*  
*Asst. Dir.*

Subject: Contingency Plan for Possible Shutdown of Government Functions: Update and Clarification

This memorandum provides additional guidance and clarification concerning the "Contingency Plan for Possible Shutdown of Government Functions: Update and Clarifications" (dated August 31, 1995), which was transmitted to you earlier. It generally reflects the information verbally relayed to the Executive Leadership Team and to Bureau personnel officers and budget staff chiefs in conference calls last week.

As of this writing, the conference committee has completed action on FY 1996 appropriations for the Department of the Interior and Related Agencies. The conference committee reports and the bill have gone back to the House and Senate floors for debate this week. The bill contains a number of troublesome provisions, and outcome of floor debate and Presidential approval are uncertain.

Discussions between the White House and the Hill continue on the content of a continuing resolution that would continue government operations until appropriations bills are enacted and the major budget issues are worked out. Agreement has not yet been reached on a continuing resolution.

There is still reason to hope that a shutdown can be averted. Employees should be advised to report to work on October 2, unless otherwise advised between now and then. We appreciate the patience that our employees have generally shown in the face of a highly uncertain situation. We also appreciate that employees have concerns about a possible shutdown and furlough -- especially about the continuity of pay. In the past, Congress has always retroactively provided for pay during shutdowns (although that does not guarantee that they would do so in the future).

However, there are MANY uncertainties about pay, etc. if we have a shutdown, if it is an extended shutdown, and if the Congress doesn't provide for retroactive pay. We simply do not have the answers to questions about the almost limitless number of possible scenarios that *might* occur. Because of these uncertainties, we need to continue to plan for the possibility of a shutdown.

The Department has submitted its shutdown plan to OMB for review. If there is a shutdown, the plan states:

- most employees would work no longer than three hours;
- written furlough notices will be issued;
- where essential employees are not needed on a full-time basis, they will be on-call; and
- specifically with regard to BLM,
  - firefighting, law enforcement, dispatch personnel to respond to emergencies will continue, and
  - *public rooms will be closed* (specific statement).

The following modifications and additions are made to the Contingency Plan, based on questions received from employees and field officials, guidance received from the Department in the form of its contingency plan, and further discussions.

#### POLICY RE-STATEMENTS:

- The general policy remains that a minimum number of 'essential' personnel should be retained.
- Where full-time services are not required, employees should be on an on-call basis and should work only the hours required to meet the emergency situation.

#### SPECIFIC TOPICS:

- *Law enforcement:* Law enforcement activities will continue subject to the following guidance.
  - the Bureau's lead law enforcement official will continue on duty;
  - each State Special Agent-in-Charge will continue on duty;
  - all rangers and special agents *in the field* will continue on duty; and
  - all other law enforcement personnel will be on call in the event of an emergency situation requiring immediate attention.
- *Alaska pipeline operations:* For health/safety reasons and because funding is exclusively from non-Federal sources and the work is being done at a site not affected by the shutdown, Alaska pipeline work will continue during a shutdown.
- *Rights-of-way contracts and construction:* Operation of rights-of-way, permits, leases, etc. by the respective operator can continue during a shutdown, unless compliance issues exist that may result in damage to governmental interests. These issues include public health or safety and if BLM action is required during a shutdown, the office or the district should determine if a Bureau employee should be identified as either essential or on-call to provide necessary BLM input/presence (see BLM Manual at 2801.88).

If construction of rights-of-way, permits, leases, etc., require BLM presence during construction as part of the terms of authorization, each office needs to:

- ① review the terms of the authorization.
- ② evaluate the potential impacts if BLM is not present and work continues, and

- ② determine if a Bureau employee should be identified as either essential or on-call to provide necessary BLM input/presence. (This includes film permits where the permit requires BLM presence during filming). See BLM Manual at 2801.88.
- *ALMRS*: Contract administration and contractor work on core ALMRS contracts will continue. This does *not* include all IRM/modernization efforts; operations will be reduced to a minimum maintenance level.
- *Timber sale administration*: Timber sale contracts will not be suspended during a shutdown. Each office should make an assessment of the number of contracts that would be active (road construction and harvest activities) and their relative complexity and environmental sensitivity (i.e., how often inspections would be needed). We would anticipate the minimum number of contract administrators (authorized officers) should be designated as essential personnel with another group being available on an on-call basis.

Not all contract administrators currently on board should be designated as essential, nor would they necessarily have to work full time. A list of personnel and intended work hours should be prepared in each district based on their contract situation. If any contract administrators are designated to only work part-time, they should otherwise be available on an on-call basis to provide service if contacted by the purchasers.

Managers designated as essential personnel can serve as contracting officers for matters (letters, modifications) beyond the authority of the authorized officer. The contract administrators should also administer any active Special Forest Product permits.

- *Contract administration generally*: While non-emergency contracts are not to be administered during government shutdown, efforts should be made to mitigate contract costs. For example, for contracts where funds have been obligated on a job basis, the Contracting Officer/Contracting Officer Representative (COR) will determine, on a case-by-case basis, if the contract can continue for a week or two without any quality assurance and inspection. If the contract requires frequent government inspection either a suspend work order (BLM Form 1510-6) needs to be issued, or, in the manager's or contracting officer's judgment, significant claims for delay may result, project inspectors and CORs may be considered essential or be available on an on-call basis. Another scenario occurs where contract performance can continue up to a certain inspection point in the contract, then an appropriate caveat should be inserted in the suspension notice. CORs may issue the suspend work order(s) if delegated by the Contracting Officer in their designation.

New funding obligations should not be made, except those needed to protect safety, health and property, such as HAZMAT emergency responses, fire protection, etc.

- *Emergency fire rehabilitation*: Emergency rehabilitation will be handled in the same manner as other potential emergency situations such as hazardous materials incidents, i.e., a limited number of essential employees will be on call to deal with emergencies.
- *Oil and gas program*: Employees should be kept on call to witness well shut-ins.

-- PERSONNEL AND PAY-RELATED QUESTIONS

- *Paychecks:* We have been advised that: "... the Department of Treasury's Financial Management Service and the Certifying Officers of the Payroll Operations Division are prepared to process any and all payroll actions submitted by your organizations for payment in fiscal year 1996." Therefore, we can expect that paychecks will be issued on schedule on October 12.
- *Buyout payments:* We anticipate that employees who are taking buyouts will be paid in the usual time frame. *If there is an extended shutdown, and if Treasury no longer issues checks due to a lapse in the debt limit (an extremely unlikely event), then it is possible that checks could be delayed.*
- *Employees in process of change-of-duty-station travel (such as in temporary quarters):* Employees will continue to be in travel status (since the obligation has already been incurred and there is not a practicable alternative).
- *Personnel on long-term training or details:* There should be very few of these situations. As a rule, employees in this situation should *not* return to their duty stations; based on the actual situation and if it appears that an extended shutdown is going to occur, additional guidance may be provided.

Conference calls will be placed on Friday, September 29 with the ELT and Bureau personnel officers and budget staff chiefs to provide the most current information available. An e-mail message will also be issued late Friday afternoon.

Questions or comments on this memorandum should be addressed to Bob Henry (202-452-7700), Jan Gamby (202-208-7754), or Roger Hildebeidel (202-208-4864).

[illegible]

'ESSENTIAL' FUNCTIONS AND PERSONNEL BLM - WYOMING			
OFFICE	DURATION	POSITION	FUNCTIONS TO BE PERFORMED
All Offices	Start of Shutdown-- finish of shutdown activity (appx 1 hour)	All employees	Orderly shutdown of operations: --Secure confidential files; offices --notify outside parties of closing --secure building --alert local fire & law enforcement of contacts during closure
State Office	Duration	State Director or representative	Activities related to shutdown
	4-8 hours	Computer Spec. (Warren); Computer Operator (Klindt); Telecommunication Spec. (Graham)	Shutdown and secure computer and telecommunication systems
	4-10 hours	Contracting Specialist (3) (K. Johnson, Schroft, Maestas)	Shutdown of contracts agreements, etc.
	4-6 hours daily	Budget Analyst (Amos)	Activities related to protection of life & property
	Duration	Spec. Agent in Charge (Vernon)	Protection of life & property
	Officials on "on-call" status: Assoc. State Director (Kesterke) DSD, Support Services (Jessen) Personnel Officer (Babcock) Property Mgt. Spec (Sullivan) Fire Mgt. Ofcr. (Eckert) Law Enforcement Agents (2)		
All District Offices	Duration	District Manager or representative	Activities related to shutdown
	Duration	BLM Ranger (3) (Stimson, Hurlock, Sauer)	Protection of life and property

## MERIDIAN OIL

December 11, 1995

The Honorable Bruce Babbitt  
Secretary of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Mr. Secretary:

Meridian Oil Inc. is seeking your assistance to prevent any recurrence of a problem we experienced during the recent shut down of the federal government. During the November shut down, Meridian was unable to obtain necessary approval of emergency measures we could undertake to ensure our drilling operations did not contaminate fresh water resources. If there is to be another shut down of the federal government, it is critical that federal personnel be available to respond to unforeseen drilling or operational problems that might endanger human health or the environment. We would appreciate your assistance in ensuring that the Department of the Interior designate sufficient personnel as essential and direct them to respond to unforeseen situations that endanger human health and the environment.

Meridian is a large independent oil and natural gas producer with operations throughout the western and southern United States. We were aware of the high likelihood of a federal government shut down and tried to plan for it by obtaining approved permits for new oil and gas drilling or well work-overs on federal lands in advance. These federal permits specify how we will drill, set casing and complete a well. They also specify that if a circumstance arises that requires a variation from the approved procedures, the government must approve the variation prior to our making the change. The Bureau of Land Management (BLM) and Minerals Management Service normally have personnel available 24 hours a day to respond to any operational problems and provide immediate approval of necessary changes. It was our understanding going into the November shut down that if we encountered any operational problems, federal personnel would be available to approve changes immediately because frequently such changes are essential for safety, health, and/or protection of property and the environment.

On November 15, 1995 (one day into the recent shut down), Meridian was drilling a well on BLM lands 14 miles southeast of Carlsbad on Burton Flats in Eddy County, New Mexico. Like all the other wells in this area, we drill through numerous geologic formations, including zones which may contain fresh water resources, to reach our target formation. We ensure no migration or contamination of fluids between formations by cementing in place our well casing (the pipe through which we run drill bits to reach and produce petroleum from a formation). This process involves pumping wet cement into the area between the outside wall of our pipe and the surrounding rock. This is a well-established procedure which ensures absolute protection of the groundwater.

In cementing the casing on this well, we rapidly discovered that the wet cement was not circulating and filling the cavity between the pipe and rock, but rather disappearing

Honorable Bruce Babbitt  
December 11, 1995  
Page Two

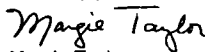
down the cavity and migrating into some unknown area. This is a relatively common problem and does not damage property so long as immediate steps are taken to prevent any potential contamination. Because the physical setting is different from one well to the next, the necessary steps vary and cannot be prescribed in advance. Pursuant to the terms of our permit, we called the BLM immediately to obtain approval of appropriate steps to re-establish circulation and complete sealing the area around the casing. Meridian called the BLM inspection and enforcement office in Hobbs, the BLM Carlsbad Resource Area office and the BLM Roswell District office. The phones rang in each of these offices but there was no answer, no answering service and no message providing for emergency services. We finally called the New Mexico Oil Conservation Division (a state agency) in Artesia to consult with them and try to obtain their approval in lieu of BLM approval. They said this situation was not within their jurisdiction. This left Meridian no choice but to proceed using our best judgment, document our actions, and hope that when the BLM returned to work they would approve our emergency measures. This seemed to be a better option than risking potential contamination of a drinking water source.

At that time, we believed there were no BLM employees deemed "essential" and working in the three offices we called. We have subsequently heard that there was at least one employee in two of these offices but they were instructed not to answer their telephones. In either case, Meridian believes that BLM did not meet their legal requirement to maintain an operating capability sufficient to protect life and property.

Meridian would appreciate your assistance in ensuring that BLM and MMS maintain sufficient personnel during a future shut down to respond to operating problems that may threaten health, safety and the environment. More importantly, these personnel must have procedures in place to respond to emergencies. It serves no public purpose to have federal employees at work who do not answer their phones or have knowledge and authority to respond to emergencies. Meridian plans to drill four more wells in the Burton Flats area in the coming months and wants to be assured we will not have the same problem if there is another federal government shut down.

Thank you for your attention to this matter. Please call me if I can provide further information.

Sincerely yours,



Margie Taylor  
Vice President, Federal Affairs

cc: Rep. Joe Skeen  
Sen. Jeff Bingaman  
Sen. Pete Domenici  
Rep. Ken Calvert



December 8, 1995

Honorable Ken Calvert  
Chairman  
Sub-Committee - Energy & Mineral Resources  
U. S. House of Representatives  
Washington, D.C. 20515

Attn: Sharla Bickley

**RE: Impact of Government Shutdown  
Response to IPAA Information Request**

In response to your December 6, 1995 request for negative impacts resulting from the federal government shutdown during November 1995, Cockrell submits the following:

**Eugene Island 33 #3 Well: OCS-G-3560**

This recompleted well in federal OCS waters was not allowed to begin initial production due to the MMS shutdown. The negative result was the deferral of over 300 BOPD for one week. We estimate a gross revenue loss of over \$50,000. Any questions may be directed to me at (713) 750-9311.

Sincerely,

Lloyd H. Hetrick  
Sr. Environmental, Health & Safety Engineer

/rl

xc: Craig A. Ward, *IPAA*

## Congress of the United States

Washington, DC 20515

November 17, 1995

The Honorable William J. Clinton  
 The President of the United States  
 1600 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20500

Dear Mr. President:

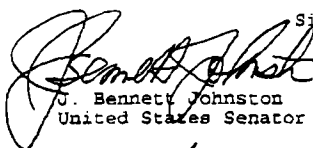
Regardless of our differences of opinion on the causes of and solutions to our current budgetary stalemate, we write to you today to bring to your attention a matter of utmost urgency and concern to the State of Louisiana. We wish to express our strong support for the expeditious reclassification of additional personnel at the Department of Interior Mineral Management Service's (MMS) Gulf of Mexico (GOM) Regional Office as "essential."

The four employees currently designated as "essential" at GOM MMS are unable to effectively process the 4 plans for exploratory and development wells and 25 plans for workovers and reconditioning operations that customarily are filed every day by Gulf oil companies. We estimate that approximately 32 additional personnel are needed to handle these requests in a timely and efficient manner.

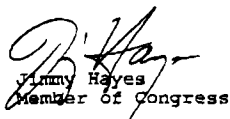
MMS GOM performs vital oversight functions, as required by law, to ensure appropriate protection of field operations, environmental operations, and management for rigs working in the Gulf of Mexico. Without MMS' legal consent, approximately 5000 people per week will be put out of work in Louisiana's offshore oil fields at a cost of hundreds of thousands of dollars per day Gulf wide. This is clearly unacceptable.

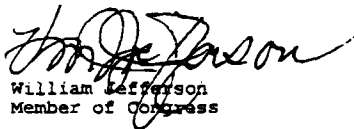
Therefore, we again urge you to immediately reclassify the requisite number of MMS GOM personnel as "essential."

Sincerely,

  
 J. Bennett Johnston  
 United States Senator

  
 John Breaux  
 United States Senator

  
 Jimmy Hayes  
 Member of Congress

  
 William Jefferson  
 Member of Congress

## CORTEZ PIPELINE GOLD PROJECT PERMITTING CHRONOLOGY

Months Time

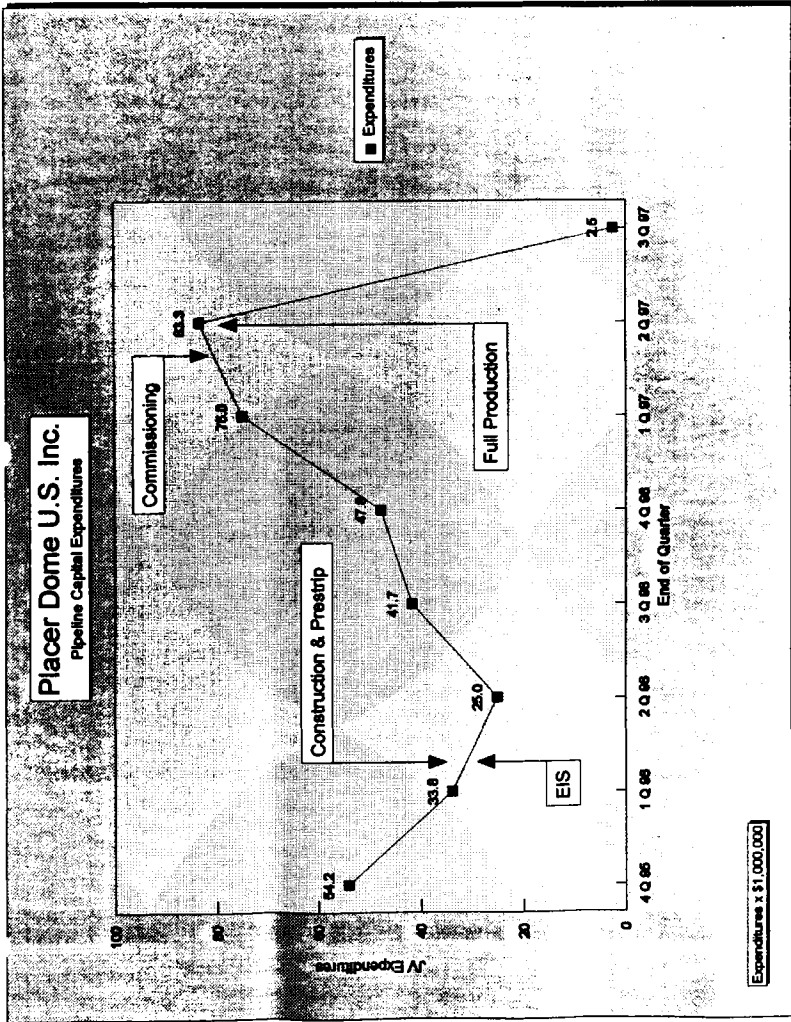
- 0 Cortez Pipeline Project Plan of Operations submitted to BLM - October 1992
- 3 Public Scoping Meetings held - December 1992
- 12 First BLM hydrology review begins - September 1993
- 16 First BLM hydrology review finished - January 1994
- 21 BLM issues the draft EIS for public comment - August 1994
- 22 Second BLM hydrology review begins - September 1994
- 24 Public comment period ends - November 4, 1994
- 25 BLM adds requirement for Great Basin Spring Snail study - December 1994\*
- 26 State BLM Director determines the DEIS can proceed to a full text final EIS, requiring major changes and additions to the text - January 31, 1995
- 27 BLM orders an additional Native American consultation process - February 1995
- 28 BLM adds requirement for Burrowing Owl study - March 1995\*
- 29 Second BLM hydrology review ends - April 1995
- 29 Third BLM hydrology review - April 1995
- 29 BLM requires additional Pit Lake/Water Quality review - April 1995
- 31 Third BLM hydrology review ends - June 1995
- 32 BLM indicates they will reject findings of additional Pit Lake/Water Quality review and recommends further study - July 1995
- 33 BLM establishes 10 items which Cortez must satisfy in order to complete the Final EIS and obtain approval by January 2, 1996. In addition to further pit lake modeling, an ecological risk assessment study and proposal for long term contingency funding are required - August 1995
- 33 BLM provides written commitment to permit approval by January 2, 1996. Agreement is reached between both parties to proceed with diligence - August 1995
- 35 Administrative review copies of the FEIS delivered to BLM District and State offices. BLM estimates 6 day review time suggesting January 2, 1996 approval date is possible - October 1995
- 36 BLM revises review time estimate to 15 days. Approval date delayed to January 19, 1996 - November 1995
- ~~36 BLM revises review time estimate to 20 days. Approval date delayed to February 1, 1996 - November 1995~~
- 37 BLM revises overall EIS completion and approval schedule frame citing agency policy considerations, contract FEIS preparation time, and compliance review time. Approval date delayed to March 25, 1996 - December 1995

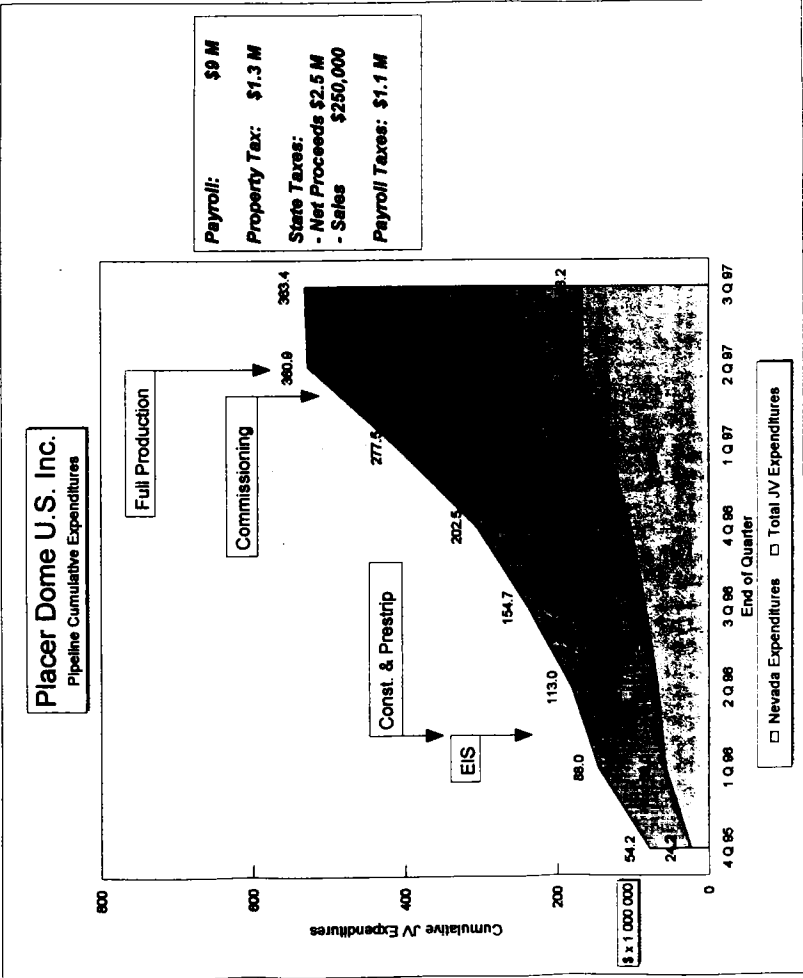
Note \* These studies completed and submitted to BLM

**Cortez Pipeline Gold Project Permitting Chronology (continued)**

As you are aware, the Cortez Pipeline Mine Development Project is a proposed expansion of the existing Cortez Gold Mine operation, and will include a new open pit mine, new mill, support facilities, tailing disposal, and heap leach facility. The development will be located between the present Cortez plantsite facilities and the Cortez Gold Acres Mine. The on-going operation employs approximately 200 employees, and will be out of ore and shut down in the next 2-4 years without this project. This expansion, when permitted, will:

- 1) Extend mine life for 12-13 years
- 2) Increase permanent employment by 75-100 employees
- 3) Employ a construction workforce of 175 people over a 15 month period
- 4) Over the 12-13 year mine life, expend the following:
  - a) annual payroll of almost \$10 million
  - b) annual property taxes of approximately \$1.3 million
  - c) annual payroll taxes of approximately \$1.1million
  - d) annual Nevada net proceeds taxes of approximately \$2.5 million





\$ x 1 000 000

Mr. MICA. I would like to recognize now my colleague, Mr. Peter Hoekstra of Michigan, who chairs the Oversight and Investigations Subcommittee of the Committee on Economic and Educational Opportunities.

You are recognized for 5 minutes.

Mr. HOEKSTRA. Thank you, Mr. Chairman. Thank you for allowing me to testify here this afternoon.

With the government shutdown, and as chairman of the Oversight Subcommittee, we thought it would be appropriate to take a look at how the Labor and Education Departments handled the shutdown. Our findings raise serious concerns that the recent government shutdown was performed in such a way as to perhaps violate certain law and in many ways had the appearance of a political calculation.

If my only concern were political, my testimony would be more tempered. But as you will see, this shutdown, coupled with the public statements of the Secretary of Labor, Robert Reich, had the effect of raising fear in the American workers concerning their safety. Additionally, financial strains were placed on State and local educational agencies unnecessarily and perhaps illegally.

Let's take a look at what happened at the Department of Labor. Secretary Reich decided that he would furlough nearly all of OSHA's job safety inspectors. This would mean that Secretary Reich must have determined that there was no reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by his decision, according to the applicable law. That was his decision to make.

However, rather than reassure the public that these employees are not necessary in some degree to the safety of human life, Secretary Reich was quoted as saying, "In a peculiar twist, befitting the interest of this Congress, we will be prohibited from carrying on our normal duties to prevent tragedies in the workplace. We will only be able to respond after these tragedies have occurred."

This quote directly contradicts with Secretary Reich's decision not to have these employees excepted under the improvement Antideficiency Act and only serves to create fear and confusion among American workers. Simply put, Secretary Reich is in a catch 22. Either he furloughed these employees when he knew there wasn't an imminent risk to human life, in which case he was jeopardizing the safety of American workers, or he determined that these furloughed OSHA inspectors were not essential to the protection of human life, in which case he was lying to the media by raising concerns about potential tragedies in the workplace.

What Secretary Reich did was wrong, and in the future he has to correct it. In the future, Secretary Reich must either deem OSHA employees as excepted or he must publicly reassure workers that there is no imminent risk to human life by having these employees furloughed. Secretary Reich simply can't have it both ways.

We then took a look at what happened at the shutdown at the Department of Education. Interestingly enough, nearly every program of the Department of Education was suspended. However, because most of the department's programs are forward funded, meaning that current payments to grantees, schools and students, are made from funds appropriated in prior fiscal years. It appears

that the department irresponsibly, and possibly illegally, chose to withhold funds that had already been appropriated by Congress, signed into law by the President, and obligated by the States and localities, mostly in fiscal year 1995.

These funding delays were unnecessary since the government's shutdown should only have applied to operations lacking current funding, in this case, those awaiting a fiscal year 1996 appropriation. In more technical terms, this has the appearance of the impoundment of government funds by the executive branch.

In essence, the department held hostage 1995 education money to force compromise on the 1996 appropriation, to increase the impact of the shutdown on as many individuals and institutions as possible, and, put simply, to further the Clinton administration's agenda. This is unprecedented, unacceptable, and wrong. Because of the Cash Management Improvement Act, which requires penalties for late payments on prior obligations, the department may have recklessly wasted education money on fines and penalties instead of on educating our children.

Finally, let me also say that, as we consider legislation that will improve or facilitate government shutdown in the future, that those of us on the Education and Economic Opportunity Committee are fully prepared that, when these measures come to the floor, those changes in rules and regulations, as they apply to the Federal Government and as they apply to Federal workers, will also be extended to workplaces and employees and employers in the private sector.

We think that's consistent with the spirit of this Congress, where those laws and regulations that apply to the private sector should also apply to Congress, and we now think it's also appropriate that it work in the reverse way. I have to tell you that a number of the things that may be considered to alleviate the impact on Federal employees or Federal operations would be illegal if people in the private sector, employers or employees, tried to do those types of things.

Thank you. That ends my testimony.

[The prepared statement of Hon. Peter Hoekstra follows:]

## ***Government Shutdown II***

Representative Pete Hoekstra  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Economic and Educational Opportunities

Testimony Before Chairman John L. Mica  
Subcommittee on Civil Service  
Committee on Government Reform and Oversight

December 14, 1995  
2:00 p.m.  
2154 RHOB

Mr. Chairman and Members of the Committee, thank-you for allowing me the opportunity to testify before you this afternoon regarding the administrations planning and implementation of the recent "government shutdown." As Chairman of the Oversight and Investigations Subcommittee of the Committee on Economic and Educational Opportunities, I am charged with ensuring that Departments and programs under the Committee's jurisdiction:

- operate in an effective, efficient and economical manner;
- are in compliance with applicable law; and
- fulfill an "appropriate" federal role.

With this in mind, and after receiving some very serious complaints concerning the recent shutdown of programs under our jurisdiction, our Subcommittee began a thorough examination of the shutdown of the Departments of Education and Labor. Our findings raise serious concerns that the recent government shutdown was performed in such a way as to violate certain law, and in many ways, had the appearance of political calculation. I am concerned that the motivation behind this decision was to protect the status quo and to slow the changes being proposed by this Republican Congress.

If my only concern were political, my testimony would be more tempered. But as you will see, this shutdown, coupled with the public statements of the Secretary of Labor, Robert Reich, had the effect of raising fear in the American worker concerning their safety. Additionally, financial strains were placed on state and local educational agencies unnecessarily and possibly illegally.

Before getting into the details of these findings, let me briefly summarize the applicable law concerning government shutdowns due to the lack of an appropriation.

#### **Brief Background on the Applicable Law**

The Antideficiency Act prohibits government officials from incurring obligations or authorizing expenditures and contracts in excess or advance of appropriations unless authorized by law. Certain activities are "excepted" from suspension and are therefore authorized to continue during gaps in appropriated funding. These include:

1. providing for national security;
2. providing benefit payments and performing obligations under appropriations or funding not subject to the delayed appropriation; and
3. conducting activities that protect human life and property.

The scope and applicability of this law is well briefed in memoranda and past opinions of the Attorney Generals office -- commonly known as the Civiletti and Dellinger Memoranda. I will not get into this legal detail now, but instead will review the committee's findings concerning how the Department acted during the Shutdown.

### Shutdown of the Department of Labor

Secretary Reich furloughed nearly all of OSHA's job safety inspectors during the recent government shutdown. This would mean that Secretary Reich must have determined that there was "no reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree" by this decision, according to applicable law. However, rather than reassure the public that these employees are not necessary "in some significant degree" to the "safety of human life," Secretary Reich was quoted as saying,

"[in] a peculiar twist befitting the interests of this Congress, we will be prohibited from carrying on our normal duties to prevent tragedies in the workplace . . . [w]e will only be able to respond after these tragedies have occurred."

This quote directly contradicts with Secretary Reich's decision not to have these employees excepted under the Antideficiency Act and only serves to create fear and confusion among American workers. At the same time, it wrongly implies that furlough decisions are in the hands of Congress.

Simply put, Secretary Reich is in a catch 22 -- either he furloughed these employees when he knew there was an imminent risk to human life -- in which case he was jeopardizing the safety of American workers -- or he determined that these furloughed OSHA inspectors were not essential to the protection of human life -- in which case he was lying to the media by raising concerns about "tragedies in the workplace."

On November 29th, we sent a letter to Secretary Reich, signed by myself, Chairman Goodling and Mr. Ballanger, asking the Secretary to explain the contradiction in his furlough decisions and his public statements, and to provide our Committee with background documentation prepared by the Department concerning the furlough decision. On Monday of this week, we received a response from the Department that failed to provide any of the requested documentation and which made no attempt to reconcile Secretary Reich's public statements with his furlough decisions. Instead, the Department "reinterpreted" the word "imminent" by relying on the imminent danger clause of the OSH act -- an interesting but inappropriate response.

In short, Secretary Reich's response did little to alleviate my concern that furlough decisions at the Department were political -- and targeted to groups that had vocal and active constituencies. Secretary Reich's public statements and furlough decisions can only be explained in political terms. This is wrong and must be immediately corrected -- before we are faced with another shutdown. In the future, Secretary Reich must either deem OSHA employees as excepted or he should publicly reassure workers that there is no imminent risk to human life by having these employees furloughed. Secretary Reich can not have it both ways.

### Shutdown of the Department of Education

Nearly every program of the Department of Education was suspended during the recent government shutdown. However, because most of the Department's programs are forward funded, meaning that current payments to grantees (schools, students, etc.) are made from funds appropriated in the prior fiscal year, it appears that the Department irresponsibly and possibly illegally chose to withhold funds that had already been appropriated by Congress signed into law by the President, and obligated by the states and localities (mostly in FY95). These funding delays were unnecessary since the government shutdown should only have applied to operations lacking current funding -- in this case, those awaiting a fiscal year 1996 appropriation. In more technical terms, this has the appearance of the impoundment of government funds by the Executive Branch.

In essence, the Department held 1995 education money hostage to force compromise on the 1996 appropriation, increase the impact of the shutdown on as many individuals and institutions as possible and put simply, to further the Clinton Administration's agenda. This is unprecedented, unacceptable and wrong and because of the Cash Management Improvement Act, which requires penalties for late payments on prior obligations -- the Department may have recklessly wasted education money on fines and penalties instead of on educating children.

We raised these concerns with Secretary Riley in a letter signed by Chairman Goodling dated November 28th. This letter also requested background documentation concerning the Secretaries furlough decisions. The Secretary responded promptly last Friday, and included several documents that we had requested. Unfortunately, the Secretaries response completely misstated the interpretation of the Antideficiency Act's handling of alternatively funded programs -- specifically that such programs can continue despite the lack of a current appropriation to fund the administration of such programs.

Of even greater concern, is that the Department included in their response a letter from their own General Counsel, Judith Winston, to the Attorney General asking Mr. Dellinger to confirm the General Counsel's opinion that forward funded programs at the Department of Education should not be suspended by the lack of a current appropriation. Since no response from the Attorney General was included, and since no other documentation concerning this opinion was provided, we are left to assume that the Department of Education not only went against every recent interpretation of the Antideficiency Act, but also went against, or ignored, the opinion of its own legal counsel. This is unprecedented and raises serious concerns.

In conclusion, let me just say that this Committee is concerned that the intent of the Antideficiency Act and the legitimate concern that the education of the American student and the safety of the American worker may have been jeopardized for political purposes during the recent shutdown. While we hope this is not the case, a preliminary review of the facts surrounding the Departments' furloughs strongly suggests otherwise.

Mr. MICA. I thank you for your testimony.

We now have a Member of the freshman class steering committee, the distinguished Member from Arizona, J.D. Hayworth.

You are recognized, sir, for 5 minutes.

Mr. HAYWORTH. Mr. Chairman, I thank you. And, members of the subcommittee, good afternoon. Thank you for inviting me to testify today on the recent government shutdown.

My distinguished colleagues who preceded me and no doubt those who will follow will provide you with their knowledgeable perspectives on determining which government services are essential and nonessential. So I would really like to focus on the underlying reason why we experienced a government shutdown in November: simply stated, our efforts to reach agreement on balancing the Federal budget. Most of the news coverage I saw of the shutdown focused on its impact on Federal employees and on people who needed passports or wanted to visit a national park, of which there are several in the State of Arizona and, indeed, in the Sixth Congressional District, which I represent. Although I'm very concerned about people who depend on government services, I am equally concerned about the consequences of failing to balance the budget and restore fiscal responsibility to the budget process.

As we all know, over the past several decades, Congress has accumulated a national debt in excess of \$4.9 trillion. Each year, the average family of four pays approximately \$2,650 in taxes just to fund interest payments on the debt, and children born today will pay over \$185,000 in interest on the debt during their lifetimes, if we fail to balance the budget.

During the 6 days that nonessential government services were suspended, more than a few people were inconvenienced, and I certainly wish we could have avoided that. In fact, as we all know, we could have avoided a shutdown if the President had not decided to veto the continuing resolution Congress passed and presented to him before the old CR expired. But, despite the inconvenience, those 6 days produced one historic accomplishment. The President signed into law an agreement to balance the Federal budget by the year 2002.

Balancing the budget will provide tremendous benefits to the American people. The lower interest rates that will result from a balanced budget mean that families will spend less to buy a home, to send their children to college, or to purchase a car. Balancing the budget will also boost our economic growth and result in the creation of American jobs. But—and I believe this is most important—it will free our children from the burden of paying our debts and give them a genuine chance to achieve the American dream.

Mr. Chairman, over the long run, the effects of the government shutdown will be mitigated. I believe the short-term problems the shutdown caused are a worthwhile price to pay for the long-term benefits of, at long last, finally balancing our Federal budget.

Thank you again for the opportunity to testify before the subcommittee. I would be happy to answer any questions you have, although I must note my presence on the floor is required in short order. Again, I thank you, Mr. Chairman, and members of the subcommittee.

[The prepared statement of Hon. J.D. Hayworth follows:]

Statement of the  
Honorable J.D. Hayworth  
Subcommittee on Civil Service  
Committee on Government Reform and Oversight  
December 14, 1995

Mr. Chairman and members of the Subcommittee, I want to thank you for inviting me to testify today on the recent government shutdown. I know that my distinguished colleagues will be able to provide you with their knowledgeable perspectives on determining which government services are essential and non-essential. So I would like to focus on the underlying reason why we experienced a government shutdown in November: our efforts to reach agreement on balancing the federal budget.

Most of the news coverage I saw of the shutdown focused on its impact on federal employees, and on people who needed passports or wanted to visit a national park. Although I am very concerned about people who depend on government services, I am equally concerned about the consequences of failing to balance the budget and restore fiscal responsibility to the budget process. As we all know, over the past several decades, Congress has accumulated a national debt in excess of \$4.9 trillion. Each year, the average family of four pays approximately \$2,650 in taxes just to fund interest payments on the debt, and children born today will pay over \$185,000 in interest on the debt during their lives if we do not balance the budget.

During the six days that non-essential government services were suspended, quite a few people were inconvenienced, and I wish we could have avoided that. In fact, as we know, we could have avoided a shutdown, if the President had not decided to veto the continuing resolution Congress passed and presented to him before the old continuing resolution expired.

But despite the inconvenience, those six days produced a historic accomplishment: the President signed into law an agreement to balance the federal budget by 2002. Balancing the budget will provide tremendous benefits to the American people. The lower interest rates that will result from a balanced budget mean that families will spend less to buy a home, send their children to college, or purchase a car. Balancing the budget will also boost economic growth and the creation of American jobs. But perhaps most importantly, it will free our children from the burden of paying our debts, and give them a real chance to achieve the American dream.

Mr. Chairman, over the long run, the effects of the government shutdown will be mitigated. I believe the short-term problems the shutdown caused are a worthwhile price to pay for the long-term benefits of balancing the budget. Thank you again for this opportunity to testify before the Subcommittee. I would be happy to answer any questions you have.

Mr. MICA. I thank the distinguished panel of Members, chairs of various subcommittees, and the representative of our new class for your perspective. What I might do, to be fair, is yield now to our ranking member, who wanted to ask some questions of Mr. Bachus. I think you two wanted to continue your exchange. I will give you this opportunity.

So, Mr. Ranking Member, you are recognized for 5 minutes.

Mr. MORAN. I appreciate it, Mr. Chairman, but I think perhaps we ought to get on to the next panel. I see Members who have been waiting here, and rather than get into a repartee on the debt ceiling, we probably ought to try to keep the hearing limited to the legislation before us that would directly avert the government shutdown and deal with legislative initiatives that we might be able to mark up and get to the floor.

So I will pass on that opportunity, Mr. Chairman.

Mr. MICA. I thank the ranking member.

We have been joined by another member of our panel, the distinguished gentlelady from Maryland, Mrs. Morella.

Did you have any opening statement or questions of our panelists?

Mrs. MORELLA. Thanks, Mr. Chairman. I would like to put an extended opening statement into the record.

Mr. MICA. Without objection, so ordered.

Mrs. MORELLA. I would just make a few comments. I agree with the ranking member, too, that we want to also get into some of the legislation that he sponsored, that Mr. Gekas has sponsored, that I have cosponsored, and hear more about it. I, first of all, very much value my colleagues' interest in the shutdown and what its adverse implications have been, and maybe how we can resolve it.

I want to thank you, Mr. Chairman, for calling this hearing. We've been talking about shutdowns for a good while now, and one looms tomorrow evening. It's kind of easy to play partisan politics, and Democrats can blame Republicans, Republicans can blame Democrats. I remember that when the November shutdown occurred, a reporter asked Speaker Gingrich, "Whose fault is it?" And the Speaker made a very wise statement that day, and the statement has stuck with me. He said, "It's all our fault. We were sent here to lead."

And he was talking about the leadership. He was talking about the President. He was talking about Mr. Gore, Mr. Panetta, Mr. Dole. He was talking about me. He was talking about you. He was talking about Jim Moran, Steny Hoyer, all of us. I think every Member in this room, we are here because we were sent here to lead.

After listening to the debate surrounding the shutdown, most Americans had to be very concerned about how the administration and this Congress would lead this country. And I think that all of us recognize the problems with this kind of gridlock and the fact that we were sent here to lead.

I don't want to see another shutdown. We all know they are a waste of time. They are too costly. They are demoralizing. And I would hope that we would try to look for a solution that we can all live with to prevent it from happening. We can listen to the next panel and hear more about the legislation.

But, again, I agree with my colleagues, also, who have made the statements, very eloquently, basically that we are working for a balanced budget where, at the present moment, the interest on the national debt next year, at this particular rate, will be the exact percentage of all our entire domestic discretionary spending, which would be education, science, transportation, and the medical costs, with the exception of entitlements.

So we all want to go in the same direction. I think it's time for us to hold hands and stick together.

Thanks, Mr. Chairman.

[The prepared statement of Hon. Constance A. Morella follows:]

**STATEMENT OF THE  
HONORABLE CONSTANCE A. MORELLA  
HEARING ON GOVERNMENT SHUTDOWN II  
SUBCOMMITTEE ON CIVIL SERVICE  
DECEMBER 14, 1995**

I thank Chairman Mica for calling this hearing. We've been talking about shutdowns for a good while now, and it is easy to play the partisan politics card so Democrats can blame Republicans and Republicans can blame Democrats. But, the simple truth is that gets us nothing.

When the November shutdown occurred, a reporter asked Speaker Gingrich, "whose fault is it?" And the Speaker made a very wise statement that day and that statement has stuck with me. He said, it is all our fault. We were sent here to lead.

And, he was talking about himself. He was talking about the President. He was talking about Mr. Gore, Mr. Panetta, Mr. Dole. He was talking about me. He was talking about you, Steny and you, John, and every Member in this room. We're all in this, because we were sent here to lead.

After listening to the debate surrounding the shutdown, most Americans had to be very concerned about how the Administration and this Congress would lead this country. I was sitting in my office during one point of the debate, and I was sensing it. I feel even the most die-hard Republican or Democrat does not want to see this kind of gridlock. We were sent here to lead -- not to point the finger, not to lay blame -- to lead.

I also want to say something about the federal workforce, because I feel sometimes what gets lost in budget debates and shutdown posturing is the fact that federal workers are human beings. They are taxpayers, and they are consumers. They have kids off in college. They belong to local PTAs; they buy their groceries at Giant and Safeway and their cars from Ford.

Those of them I have spoken with believe in a future for their children -- the common vision that we all share, even though there are different roads to get there. They know the deficit must be cut.

But, I also hear them screaming for fairness. I hear them saying that, "they should not be pawns in a political game of chess." I hear them saying enough is enough. And I am one Member of Congress that has heard their anguish; and I, too, believe that enough is enough.

Regardless of who sits or sat in the White House or who controls or controlled Congress, over the years federal workers have been treated like second class citizens in the land they help build, protect and preserve. And, enough is enough.

Folks, we just experienced the longest government shutdown in U.S. history, and we are staring at another one either this Friday or next.

I do not want to see another shutdown. They are a waste of time, they are costly, and they are demoralizing. Let's not play politics; let's lead. Let's look for a solution that we all can live with to prevent this from happening. Let's enact a long-term solution to this problem.

I am a cosponsor of two bills, H.R. 2006 and H.R. 2184, that would keep the government operational and workers paid

while the Congress and the President worked out political differences. We have the sponsors, Mr. Gekas and Mr. Moran, here today. Let's find out if these bills provide the framework we need to lead.

I'm reminded about something we do in May. We celebrate Public Service Recognition Week. It is an opportunity to honor public servants and to recognize their dedication to this country. A dedication that was embodied and displayed for the world in the wake of the Oklahoma City Bombing when a public servant, who devastated and injured, anguished over her inability to get checks out to recipients.

Several months after this week of recognition, federal workers, in fear of a shutdown, must annually anguish over how they will meet mortgage payments and other obligations. This is not right; this is not leadership.

This annual affair does immeasurable damage to federal worker morale and commitment. It's time to stop this. We can do this; we should do this.

**I thank Chairman Mica for calling this hearing. I look forward to hearing from my colleagues.**

Mr. MICA. I thank the gentlelady and recognize Mr. Burton.

Mr. BURTON. I just want to make a comment. Representative Hoekstra made a comment that I thought was very important, and I wanted to respond to that; that is that, as a practical matter, if the government is shut down, and we have a number of people who represent large numbers of Federal employees, and when we start talking about getting the votes necessary for one position or another, you can't get their votes if you're going to put a lot of their employees out of work without compensation.

So, when we had the government shutdown, the political reality was that we were going to pay those people when they weren't working or think that wasn't going to fly. So it seems to me a realistic thing to do to say, "Look, if they want to work during the shutdown, we will allow them to work, and they will be compensated retroactively." We hope there are no more government shutdowns, but if there are, they will be working; they will be providing a service for the country, rather than being at home, not working, worrying, and then being compensated anyhow.

So I think the taxpayer benefits; the Federal employee benefits, if we are able to solve this thing by legislative action which says, very clearly, that they are going to be able to be employed. Now, I understand the concern that you had about private contractors and private employers, but this is not a perfect science that we are engaged in, in politics and in governing.

And I don't know how in the world we could extend what we're talking about to the private sector and make it workable. In my opinion, we can deal with the problem of making sure that Federal employees who are laid off because of a government shutdown have the opportunity to work if they so choose. I've got legislation—I think others do—Congressman Moran and I, that will deal with that. But to not deal with it up front I think is going to cause us more problems.

With that, I will be happy to yield to my colleague.

Mr. HOEKSTRA. I thank the gentleman for yielding.

Actually, there is a situation that is very similar. We have discovered that California, at their last budget impasse, decided that they would issue State IOUs to their workers who were voluntarily working. Under the Fair Labor Standards Act, they were found in violation of the law and were prohibited from doing that, which is, I think, very similar to what we are considering doing here in Washington.

All I'm saying is, if it's OK for Washington, we ought to change the law and make it OK for California, make it OK for Michigan. We should be willing to live under the same laws that we are putting the private sector under. This also applies to the private sector, the FLSA, we've had hearings and markups on some bills this year about what we in this Congress have done as defining volunteer work and almost making it impossible to volunteer.

Mr. MICA. Well, I thank the panel for their participation. Do you have any comments?

Mr. BACHUS. Mr. Chairman, I would just like to thank you for the opportunity of coming before you, and I appreciate the expressions that we all have to work together. I think that's the key.

Mr. MICA. We also appreciate your individual leadership as chairs and as the representative of the freshman class, chairs of various investigations and other responsible subcommittees of the House.

I also appreciate your fine efforts in trying to get the agencies to respond both to the letter and intent of the law, and to see that public health and safety is ensured, much as we've tried to do in a bipartisan fashion on our subcommittee. So we thank you.

Mr. Hoekstra.

Mr. HOEKSTRA. Mr. Chairman, is the record open? I've got copies of the letters.

Mr. MICA. Yes, absolutely, without objection, and we will leave the record open.

[The information referred to follows:]

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November 29, 1995

VIA FACSIMILE (202) 219-8822

The Honorable Robert Reich  
 Secretary of Labor  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

Dear Secretary Reich:

The Committee on Economic and Educational Opportunities is charged with ensuring the effective, efficient and economical operation of the Department of Labor. The Committee also is responsible for ensuring that Departmental activities are consistent with all applicable law. Therefore, pursuant to its oversight responsibilities under Rule X and XI of the Rules of the House of Representatives, the Committee would like to make the following request for information regarding the activities of the Department during the recent lapse in funding due to the lack of a signed appropriations bill for Fiscal Year 1996.

The Constitution prohibits the withdrawal of any money from the Treasury "but in the Consequence of Appropriations made by the Law." By the terms of this Constitutional provision, government entities might continue to obligate funds during a temporary lapse in appropriation as long as no monies are paid out during this period. The Antideficiency Act (Act) was passed to close this gap by making it a crime for an official or employee of the United States Government or of the District of Columbia to make expenditures in excess of appropriations or involve the Government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. 1341 (a) (1) (1988).

The Act also prohibits any officer from accepting "voluntary services" or "employ[ing] personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. 1342. Section 1342 was amended in 1990 to specifically preclude "ongoing, regular functions of the government the suspension of which

The Honorable Robert Reich  
November 29, 1995  
Page 2

would not imminently threaten the safety of human life or the protection of property." *Id.* Coupled with the Constitution and the Act and due to some questions concerning the scope and meaning of this Act, we must also consider then Attorney General Benjamin Civiletti's issued opinion clarifying the scope of this Act in 1980. While this memo specifically dealt with the lapse of funding for the Federal Trade Commission, he later issued a second opinion, written in January 1981, that significantly modified his earlier opinion, and which applied to larger questions presented by a more widespread, but temporary lapse in appropriation. 5 Op. OLC 1 (1981) (Civiletti Memo). The Civiletti Memo noted that the phrase "authorized by law" would permit an agency to continue the obligation of funds where the obligations are either funded by multi-year or no-year appropriations, expressly authorized by statutes permitting obligations in advance of appropriations, or impliedly authorized by the specific terms of duties imposed on the agency. This same phrase "authorized by law" would, according to the Civiletti Memo, also permit the President to incur obligations "necessarily incident to presidential initiatives undertaken within his constitutional powers." *Id.*

Attorney General Civiletti then interpreted the Act's limitations on voluntary services under Section 1342. Specifically, the Civiletti Memo provides a test for determining whether an emergency involving life or property exists:

First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

This opinion was reaffirmed by Assistant Attorney General Walter Dellinger, in responding to a request for advice from OMB Director Alice Rivlin, with minor modifications to account for the 1990 amendment to the emergency exception of the Act. Memorandum for Alice Rivlin from Walter Dellinger, August 16, 1995 (Dellinger Memo). In this regard, Mr. Dellinger noted:

... there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question. [Emphasis added to show the change.]

Providing further clarification, the Dellinger memorandum notes:

... the emergencies exception applies only to cases of threat to human life or property where this threat can be reasonably said to be near at hand and demanding of immediate response.

The Honorable Robert Reich  
November 29, 1995  
Page 3

In short, the Civiletti and Dellinger memoranda provide the basis for the guidelines given by the OMB to federal agencies on how to design and implement their Suspension of Operation plans, and should be the basis for the Department's own shutdown plans. After reviewing the Department's plans, and after reading several news accounts concerning these plans and their implementation, we have several questions and concerns.

#### The Occupational Safety and Health Administration (OSHA)

It is our understanding that approximately 90 percent of OSHA's staff was deemed non-essential during the recent gap in appropriation. In particular, we understand that only 256 of OSHA's 2,267 job safety inspectors remained on the job during the government shutdown.

According to the Antideficiency Act and the interpretations of this Act provided by Messrs. Dellinger and Civiletti discussed above, your decision to furlough these 2,011 job safety employees would mean that you had determined that there was "no reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree" by your decision to delay the services of these employees.

The public should be reassured that you determined that the functions of these employees are not necessary or essential "in some significant degree" to the "safety of human life." Yet, rather than reassure the public, you were recently quoted as saying, "[in] a peculiar twist befitting the interests of this Congress, we will be prohibited from carrying on our normal duties to prevent tragedies in the workplace . . . [w]e will only be able to respond after these tragedies have occurred." You then went on to express concern that the public does not understand the "real life implications of shutting down an agency." (BNA, Daily Labor Report, p. C-1, 11/14/95). This quote directly conflicts with your decision not to have these employees excepted under the Antideficiency Act. Moreover, such statements serve only to create fear and confusion among American workers. You also seem to suggest that the decision as to which employees are excepted or essential under gaps in funding is a decision of the Congress, when in fact, such decisions are made by the Executive branch. In light of the above, please:

- (1) Explain your decision to furlough these job safety inspectors in light of Section 1342 of the Antideficiency Act, which excepts employees involved in the "safety of human life," and the interpretive memoranda of Messrs. Dellinger and Civiletti concerning the application of this section. In particular, please explain your furlough decisions in light of your public statements that these employees are "necessary to prevent tragedies in the workplace." In addition, provide any internal memorandum or documentation that was prepared regarding the government shutdown or the preparation of OSHA's contingency plan.

The Honorable Robert Reich  
 November 29, 1995  
 Page 4

- (2) Provide an analysis of how OSHA safety inspectors differ from other federal personnel charged with protecting the safety of human life, but who were excepted by their agencies during this shutdown (e.g., meat inspectors). Include any memorandum to or from the OMB that provided guidance in this regard.
- (3) Explain the OSHA furlough decision in light of the concomitant decision to deem inspectors at the Mine Safety and Health Administration (MSHA) as excepted under Section 1342. In particular, please provide the characteristics you identified that differentiated MSHA inspectors from OSHA inspectors in terms of their relationship to the "safety of human life."

**Employment Standards Administration (ESA)**

The Department's contingency plan for the ESA, submitted on September 5, 1995, referred to composing and sending letters to "non-construction labor unions, major employer councils, and interest groups" and other "unions representing covered employees" even though they are listed in the plan as not being "directly involved in program activities." It is unclear how these activities are justified under the Antideficiency Act, or how they apply to the normal termination of program activities--particularly considering your decision to furlough OSHA safety inspectors. In this light, please provide:

- (1) copies of all letters (either a representative sample or a copy of the form letter used) sent to the public and other "interested" parties concerning the suspension of operations;
- (2) a list identifying all public and other "interested" parties that received such notification;
- (3) the employment status of the individuals who prepared and sent such notification (excepted, essential, or non-essential) and the amount of time spent performing this activity; and,
- (4) an explanation of how these activities are consistent with current law, regulatory guidelines, or the Civiletti and Dellinger memoranda.

The Department's contingency plan also discusses the composing and sending of letters to beneficiaries under the Office Workers' Compensation Program (OWCP) to notify recipients that there will be a cessation of their federal benefits. As noted above, activities not tied directly to the current year appropriation would not be affected by the funding gap. In particular, programs funded under a multi-year or no-year appropriation are allowed to continue operations.

The Honorable Robert Reich  
November 29, 1995  
Page 5

Moreover, the Civiletti and Dellinger memoranda allow for the continuation of administrative functions necessary to maintain alternatively funded programs, despite the lack of current funding for such administration. The example most often cited for such a circumstance is the continuation of Social Security payments during a temporary governmental shutdown.

Again, according to the Department's own contingency plan, the ESA and, in particular, the OWCP deemed a large number of its employees to be essential. In this regard, please provide:

- (1) a list of which benefit programs were temporarily suspended and how they are funded (trust fund, insurance, reimbursable assessment), including an explanation of why the program was suspended in light of the Civiletti and Dellinger memoranda;
- (2) copies of the letters (either a representative sample or a copy of the form letter used) sent to beneficiaries notifying them of a cessation of their federal benefits;
- (3) an explanation of the criteria used by the ESA to classify its employees as essential, non-essential, or excepted; and,
- (4) a list of employees who were deemed either essential or excepted and a summary description of the tasks they perform (by office).

When preparing your responses, please interpret such requests to include materials that are in hard copy, as well as electronic medium (e.g., E-Mail) and personal notes. We appreciate your effort in this regard.

Quite frankly, Mr. Secretary, we are gravely concerned that the intent of the Antideficiency Act and the legitimate concern for American worker health and safety may have been ignored and manipulated for political grandstanding purposes. While we hope this is not the case, a preliminary review of the facts surrounding the DOL furloughs and your public statements related to those furloughs, suggests otherwise.

The Honorable Robert Reich  
 November 29, 1995  
 Page 6

Because of the seriousness of this matter, and because of the possibility of future gaps in appropriations, we would appreciate answers to the above questions by December 5, 1995. Thank you in advance for your assistance and cooperation. Should you have any questions, please feel free to contact Emilia DiSanto or Derrick Max at (202) 225-7101.

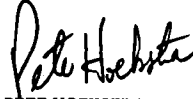
Sincerely,



BILL GOODLING  
 Chairman  
 Committee on Economic and  
 Educational Opportunities



CASS BALLENGER  
 Chairman  
 Subcommittee on Workforce  
 Protections



PETE HOEKSTRA  
 Chairman  
 Subcommittee on Oversight  
 and Investigations

WFG:DAM

cc: The Honorable William F. Clinger, Chairman,  
 Committee on Government Reform and Oversight  
 Ms. Mary Ann Richardson, U.S. Department of Labor

U.S. Department of Labor

Solicitor of Labor  
Washington, D.C. 20210

DEC 11 1995

Honorable Pete Hoekstra  
Chairman  
Subcommittee on Oversight  
and Investigations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Hoekstra:

Secretary Reich has asked me to respond to your letter of November 29, 1995, in which you request information regarding certain Department of Labor activities during the recent lapse in funding. For your convenience, we have organized our response by program agency and in accordance with the format of your letter.

I. The Occupational Safety and Health Administration (OSHA)

Inquiry 1: Explain your decision to furlough these job safety inspectors in light of Section 1342 of the Anti-Deficiency Act, which excepts employees involved in the "safety of human life," and the interpretative memoranda of Messrs. Dellinger and Civiletti concerning the application of this section. In particular, please explain your furlough decisions in light of your public statements that these employees are "necessary to prevent tragedies in the workplace." In addition, provide any internal memorandum or documentation that was prepared regarding the government shutdown or the preparation of OSHA's contingency plan.

Response: The Anti-Deficiency Act allows the government to continue functions in advance of appropriations on matters of "emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342. The Anti-Deficiency Act amendment of 1990 narrowed the interpretation of the provision relating to emergencies, by providing that during a lapse in funding, the Government may not engage in its "ongoing, regular functions . . . the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342. The 1995 Justice Department opinion reinforces the view that, in the absence of appropriations, the threat must be imminent for the function to be performed as an "excepted" activity.

The majority of OSHA's ongoing activities in conducting preventative worksite inspections, providing employer outreach and assistance, and responding to public inquiries in a routine fashion was not determined to fall within the legal parameter of

an emergency involving the safety of human life from an imminent threat. As a result of several OSHA and Solicitor Office reviews during the period between September and mid-November, the Department determined that OSHA employees involved in enforcing imminent danger situations under Section 13 of the OSH Act, and those involved in responding to workplace fatalities and catastrophes, should be excepted from suspension requirements. OSHA's preventative role in ensuring workplace safety was suspended. The Department also determined that OSHA employees should be able to respond to complaints or other information coming to our attention that indicates that employees are exposed to hazardous conditions that present a high risk of death or serious physical harm in the near future. For instance, hazards cognizable under Section 13 of the Act are, by definition, of such gravity, that their abatement is required immediately, long before the course of routine administrative enforcement proceedings is permitted to run. OSHA's preventative role, such as conducting general schedule inspections, in ensuring workplace safety was suspended. Hence, OSHA identified two senior compliance personnel in each of its area offices and a few headquarters personnel that would be "excepted employees" to deal with such emergency situations as might arise that would fall within "excepted" activity. In addition, OSHA recognized, as an important contingency provision of its plan, that should a situation arise falling within excepted activities, additional staff would be identified and recalled to address particular emergencies.

Inquiry 2: Provide an analysis of how OSHA safety inspectors differ from other federal personnel charged with protecting the safety of human life, but who were excepted by their agencies during this shutdown (e.g., meat inspectors). Include any memorandum to or from the OMB that provided guidance in this regard.

Response: OSHA's role in providing worker protection is a multi-faceted undertaking. Although OSHA has, as components of its mission, the responsibility to conduct workplace inspections, promulgate standards and investigate workplace complaints, the agency does not have statutory requirements to undertake specific actions in accomplishing its mission. OSHA does not have an inspector at every worksite, nor is it required to inspect any specific establishment, worksite or industry. This fact distinguishes OSHA from other Federal regulatory agencies with more clearly stated specific activities that must be undertaken, particularly where private sector activity would cease in the absence of the federal presence (e.g. meat inspections or air traffic control).

Inquiry 3: Explain the OSHA furlough decision in light of the concomitant decision to deem inspectors at the Mine Safety and Health Administration (MSHA) as excepted under Section 1342.

In particular, please provide the characteristics you identified that differentiated MSHA inspectors from OSHA inspectors in terms of their relationship to the "safety of human life."

**Response:** MSHA continued only those functions that directly involved protecting against imminent threats to human life in the Nation's mines, or which were necessary for the protecting of the Government's property. During the November furlough, Federal mine inspectors conducted inspections that targeted special hazards like the risk of explosions, as well as conditions and practices that recently have been key causes of death and serious injuries.

Mining is a specialized industry with a long history of tragic accidents and disasters. The workplace changes often and unpredictably, from shift to shift and day to day. Frequent inspections are essential to finding and correcting hazards as they emerge.

The special character of mining, and its hazards, is reflected in the inspection-provisions of the Federal Mine Safety and Health Act of 1977. They demonstrate that "imminent" dangers occur regularly in the mines. For this reason, the Mine Act requires at least four annual inspections for underground mines, and at least two annual inspections for surface mines. 30 U.S.C. § 813(a). Some mines must be inspected far more frequently. For example, mines that generate large quantities of highly explosive methane gas must be spot-inspected as often as every five days. 30 U.S.C. § 813(i).

In addition, MSHA technical services which were critical to ensure safety and continued operation of the Nation's mines were excepted activities. For example, underground coal mines must have plans approved by the Secretary for ventilation and for supporting the roof and walls of mined areas, -- the latter an essential measure to protect against cave-ins -- which are analyzed and must be approved by MSHA for effectiveness and conformance with safety laws in order for the mine to operate. See 30 U.S.C. §§ 811, 862(a), 863(o). These "plan approval" functions were maintained to enable MSHA to provide required government services arising from the need for continued operation of the private economy. See 30 U.S.C. § 878(c) and (i).

The same legal standard that was applied to MSHA was applied to OSHA. OSHA addresses a vast array of workplace hazards across all sectors of industry, not all of which are likely to cause death or serious physical harm on an imminent basis. The Department identified the range of OSHA activities which met the criteria of the Anti-Deficiency Act for continuation during a lapse in funding. Only those activities relating to an imminent threat to the safety of human life were "excepted." As stated in response to Inquiry 1 above, the Department determined that OSHA

employees involved in enforcing imminent danger situations under Section 13 of the OSH Act, and those involved in responding to workplace fatalities and catastrophes, should be excepted from suspension requirements. It should be noted that, even with the narrowing effect of the 1990 amendment to the Anti-Deficiency Act, this application of the statute accords with the prior legal determination of Solicitor of Labor T. Timothy Ryan, Jr., who, during the Reagan Administration, concluded in an October 19, 1982, memorandum that "only those OSHA employees involved in enforcing closedowns in imminent danger situations under 13 of the Occupational Safety and Health Act, and those involved in making fatality investigations may be excepted." As an illustration of the staffing implications of this 1982 opinion, OSHA identified 176 employees for "excepted" work in its September 25, 1987, Contingency Plan for Suspension of Agency Operations. This figure stands in contrast to the 210 employees identified as exempt by OSHA in 1995.

## II. The Employment Standards Administration (ESA)

### A. Letters to "non-construction labor unions, major employer councils, and interest groups" and other "unions representing covered employees"

Inquiry 1: Provide copies of all letters (either a representative sample or a copy of the form letter used) sent to the public and other "interested" parties concerning the suspension of operations.

Response: No letters were sent to the public or other "interested" parties concerning the suspension of operations.

Inquiry 2: Provide a list of all public and other "interested" parties that received such notification.

Response: Not applicable. See response to Inquiry 1, immediately above.

Inquiry 3: Provide the employment status of the individuals who prepared and sent such notification (excepted, essential, or non-essential) and the amount of time spent performing this activity.

Response: Not applicable. See response to Inquiry 1, immediately above.

Inquiry 4: Provide an explanation of how these activities are consistent with current law, regulatory guidelines, or the Civiletti and Dellinger memoranda.

Response: Not applicable. See response to Inquiry 1, immediately above.

B. Activities by the Office of Workers' Compensation Programs (OWCP)

Inquiry 1: Provide a list of which benefit programs were temporarily suspended and how they are funded (trust fund, insurance, reimbursable assessment), including an explanation of why the program was suspended in light of the Civiletti and Dellinger memoranda.

Response: No benefit programs were suspended during the recent lapse in funding.

Inquiry 2: Provide copies of the letters (either a representative sample or a copy of the form letter used) sent to beneficiaries notifying them of a cessation of their federal benefits.

Response: Not applicable. See response to Inquiry 1, immediately above.

Inquiry 3: Provide an explanation of the criteria used by ESA to classify its employees as essential, non-essential, or excepted.

Response: ESA classified its employees as excepted or essential based on the criteria contained in 31 U.S.C. § 1342 (Anti-Deficiency Act), and the Civiletti and Dellinger memoranda.

Employees in the Office of Workers' Compensation Programs (OWCP) were classified as excepted because benefit eligibility and payment activities were authorized to continue for the FECA Employees' Compensation Fund, the Black Lung Trust Fund, and the Longshore Special Fund. OWCP administrative activities that are required to assure continuation of these benefit programs are authorized so long as actual benefit funds remain legally available.

During the November shutdown, legally available balances remained in all three of these benefit accounts. Thus, we reasoned, in conformity with the Department of Justice's legal opinions, that personnel required to authorize and pay benefits would be considered excepted to ensure that the basic payment function was not compromised and any medical emergencies were responded to. The number of personnel varied by program, according to the expected volume and complexity of the excepted activities. Lastly, a skeletal management staff in the national and field offices was necessary to manage these operations.

Inquiry 4: Provide a list of employees who were deemed either essential or excepted and a summary description of the tasks they perform (by office).

Response: See Attachment, which provides OWCP shutdown data by program area.

\* \* \*

The Secretary appreciates this opportunity to address your questions and concerns. Should your staff members be in need of further information, they may contact Mary Ann Richardson, Deputy Assistant Secretary for Congressional Affairs, at (202) 219-6141.

Sincerely,

  
Thomas S. Williamson, Jr.

Enclosure

File: CONGRE'L  
Range: PAGE2  
05-Dec-95

# ESA/OWCP SHUTDOWN DATA

Program Activity	10-28-95 Emply.	Permanent Employees	Excepted Employees			Phase-down Employees			Total Exempt Employees	Employees Furloughed	
			N.O.	R.O.	TOTAL	N.O.	R.O.	TOTAL		Perm.	Temp./ Other 1/
FECA	988	960	106	718	824						8
Longshore	120	117	5	44	49						3
Black Lung	267	264	19	27	46						3
Total OWCP . .	1,355	1,341	130	789	919	5	34	39	958	383	14

1/ Temp./Other appointments include the Onboard Employment Report categories "FT Temp," "Co-Ops," and "Special Employment."

Mr. MICA. We will try to work in a bipartisan fashion in the next hours to see if something can be crafted to bridge any of the gaps and provide some legislative remedy, in the event of another shutdown.

We welcome your input. You have staff, and you have expertise yourselves in these matters that we couldn't possibly have. So we welcome your participation in that process. In our next panel, we will hear from some of the Members who have legislation pending and other proposals. We thank you.

If we could have the next panel come forward. We have Mr. Steny Hoyer from Maryland; Mr. George Gekas from Pennsylvania; Mr. Glen Browder from Alabama; Mr. Joe Barton from Texas; Ms. Karen McCarthy from Missouri; and Mr. Sonny Bono from California.

If you could, again, join us. As is customary, while you are being seated, if you can and would limit your remarks to 5 minutes, we would appreciate that. And we will include lengthy statements or additional information for background in the record of the hearing today.

Now that we have our panel together, Mr. Steny Hoyer is recognized first for 5 minutes. Then, Mr. Gekas, Mr. Browder, Mr. Barton, Ms. McCarthy, and Mr. Bono.

Mr. Hoyer, you are recognized.

**STATEMENTS OF HON. STENY HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND; HON. GEORGE GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA; HON. GLEN BROWDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA; HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; HON. KAREN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI; AND HON. SONNY BONO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. HOYER. Thank you very much, Mr. Chairman.

I appreciate the opportunity to appear before the committee, and I appreciate these hearings on the longest shutdown in our history. As you know, more than 800,000 people were sent home, at a cost of approximately \$700 million to \$800 million to the taxpayer.

As you review the impact of the shutdown and its substantial cost, I hope that the subcommittee will ask the Speaker and the leadership, very frankly, to ensure that it never happens again. The world's leading power and all of its citizens should be ashamed of the contrived crisis that the leadership chose to create. Some on the Republican side seem to view this as a game, very frankly, where they can shut down what they do not like and keep open what they do. The Parks bill yesterday was a symptom of that.

For more than a century, the law has recognized that absent appropriations there is authority only for Federal expenditures for emergency situations involving danger to life and property. I began pressing for hearings, Mr. Chairman, on a potential shutdown in the Appropriations Committee on Treasury and Postal in late August. It was clear, based upon the statements the Speaker made

throughout the summer, that he intended, if he couldn't get agreement from the President, to shut down the government.

Despite those threats, my friend, Chairman Jim Lightfoot, who does an outstanding job as the chairman of our committee, who is fair and nonpartisan in his approach, but he declined to hold hearings because he believed all appropriation bill measures would be finished on time. None of them were, of course. Today, only 7 of the 13 have been enacted into law, and I have again asked Chairman Lightfoot to hold hearings on what I believe are the substantial funding aspects of shutdown.

Mr. Chairman, I want to commend the administration for its efforts to manage, with only limited precedent, last month's major shutdown of the government. Never before in history have we shut down the government for that period of time. In fact, I've been here for a number of those shutdowns, most of them were for hours, if they occurred, and over weekends, and it, frankly, was the Congress that wanted to open up the government, and it was the Congress that accommodated President Reagan's or President Bush's desires so that that could be done, if you check the record.

Now, let me digress from my written statement and say, Mr. Chairman, you opened with a recitation of the constitutional provision. I thought that was appropriate. The Constitution, in fact, says that no expenditure will be made save for an appropriation passed by Congress.

I want to say something that might sound a little bit heretical to those of us who have a large number of Federal employees whom we represent, but I'm not so sure that I'm interested in making it easier to shut down the government. I'm not so sure I want people to pretend that shutting down government is simply a political game played between the Congress and the President to muscle one or the other. I'm not so sure that I want services to continue as if nothing occurred. I'm not so sure that we haven't created for ourselves a formula for irresponsibility.

You want to keep Social Security going; so do I. You want to keep veterans' payments being made; so do I. You want to keep Secret Service, Customs, and ATF on the job; so do I. And in the process, you want to shut down those things you don't like, that maybe people aren't going to be so upset with in the immediate future.

While I understand the purpose of the legislation that is proposed, I'm not sure its helpful to Federal employees or the operations of Federal Government or to the responsibility of the Congress and the President to act to adopt appropriation bills in a timely fashion. I believe these hearings ought not to be how to manage a shutdown. Very frankly, what we ought to hold hearings on is how to avoid shutdowns, because they don't make any sense.

Mr. Hayworth implied, and I think believes, legitimately, that the end justified that means. I understand his premise, that shutting down the government, if it results in a balanced budget, was worth the price. I think that's probably correct. As you know, I voted for the balanced budget amendment. I am one of the 68 Democrats who voted for the coalition budget, which cuts more funding in the next 7 years than does the Republican alternative, as all of you know. So I believe in a balanced budget.

But, Mr. Chairman, I want to tell you that you quoted the President in his letter. Mr. Gingrich was quoted as saying, "The President will veto a number of things, and we will put them all on the debt ceiling, and he will decide how big a crisis he wants." In other words, we will muscle the President, put on him the onus. Then he said, in September, "I don't care what the price is. I don't care if we have no Executive Office and no bonds for 30 days. Not this time."

Mr. Chairman, I would hope all of us, as Mrs. Morella has said and Mr. Moran has said and you have said, would reach out to one another and say, let us not use this as a device to muscle one another irresponsibly. Let us pass appropriation bills. Let us, yes, adopt, in my opinion, a balanced budget within the 7 years that I've supported, and will continue to support, and will fight for, and will urge the President to be for, because I think that's good government for all our people.

But for all our people, shutting down government is bad policy, bad politics, and bad finances. I would urge us to address the ques-

STENY H. HOYER  
5TH DISTRICT, MARYLAND  
CO-CHAIR  
DEMOCRATIC STEERING COMMITTEE  
COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE

APPROPRIATIONS COMMITTEE  
TREASURY, POSTAL SERVICE,  
GENERAL GOVERNMENT  
LABOR,  
HEALTH AND HUMAN SERVICES,  
EDUCATION

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2005**

STATEMENT OF THE HONORABLE STENY H. HOYER  
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE  
ON WHAT'S ESSENTIAL DURING A GOVERNMENT SHUTDOWN

DECEMBER 14, 1995

Mr. Chairman, I appreciate the opportunity to discuss the very serious subject of government shutdowns. Like millions of Americans, I am deeply concerned that our Federal government was shut down for six days last month -- the longest shutdown in our history. More than 800,000 people were sent home mid-morning on November 14th and did not return until November 20th.

While I hope that this irresponsible action will not be repeated, I regret that it is clearly a possibility when the current continuing resolution expires on December 15th. As you review the impact of the shutdown and its substantial cost, I hope that the Subcommittee will ask the Speaker and the leadership to ensure that it never happens again. The world's leading power and all of its citizens should be ashamed of the contrived crisis that the Leadership chose to create.

Some on the Republican side seem to view this as a game where they can shut down what they do not like and keep open what they do. We saw evidence of that this week when the Leadership brought a bill to the floor to keep our National Parks open -- a noble cause that could be solved by passing an Interior Appropriations bill. We saw evidence of it at your hearing last week when you questioned Commissioner Chater about what components of the Social Security Administration stayed open during the shutdown.

The fact is that no one can pretend these shutdowns are not real. There are consequences of not fulfilling the Constitutional requirement for appropriations measures. This is not a game and there will again be no winners, if the leadership forces another shutdown.

For more than a century, the law has recognized that, absent appropriations, there is authority only for federal expenditures for emergency situations involving danger to life or property. The Republican leadership cannot keep certain programs open and running just because they are popular. We cannot allow Members to create a charade that shutdowns only hurt programs deemed by some to be unpopular.

I began pressing for hearings on a potential shutdown in the Appropriations Subcommittee on Treasury, Postal Service and General Government in late August. It was clear, based on statements the Speaker made throughout the summer, that he wanted to create a crisis. Despite those threats my friend, Chairman Jim Lightfoot, declined to hold hearings because he believed all appropriations measures would be finished on time.

Regrettably, by October 1st, not a single one of the thirteen appropriations bills had been signed. Today, only seven of the thirteen have been enacted into law and I have again asked Chairman Lightfoot to hold hearings on what I believe are the substantial funding aspects of a shutdown. Some of the costs are difficult, if not impossible, to measure. An enormous amount of time and resources were invested by the people you heard from at last week's hearing in planning for a shutdown after it became apparent that the Congress was so far behind on the appropriations process.

I hope that, having created one crisis and heard the public uproar, that the Republican leadership will move forward on the remaining bills. More importantly, however, we should immediately pass another continuing resolution in a timely, bipartisan fashion without the leadership adding extraneous measures.

I commend the Administration for its efforts to manage, with only limited precedent, last month's major shutdown of the government. The planning done by the Office of Management and Budget and the various agencies avoided more serious problems from occurring. While the Leadership here on the Hill played partisan politics, the Administration did its best to protect the public interest during the longest shutdown ever.

Obviously, one of the most important questions that each agency faced was who worked and who did not work. Some activities that are funded through user fees, such as the Mint and the Patent and Trade Mark Office, stayed open. So did some government corporations that fund their activities through fees, most notably Amtrak and the United States Postal Service.

But for most Federal agencies, the decision was based on whether or not employees were needed for emergency actions to protect against imminent threats to life or property. Excepted employees, as you know, performed medical services that cannot be delayed at Veterans Medical Centers and through the Public Health Service. Also exempted from the furlough were many law enforcement functions, transportation safety operations, and many civilian employees of the Department of Defense.

I am angry that some have chosen to suggest that the employees who were sent home under the very specific legal guidelines are deemed "nonessential." I trust that none of today's witnesses will offer such a view and that none of the distinguished Members of this panel will repeat that outrageous allegation.

As I said in a November 17th letter to every Member of the House of Representatives, among those at home during the furlough were men and women who: process benefits for American citizens; provide vital information to the business community and the public; lead our Nation's research efforts in fields ranging from defense to cancer; and run our National parks and museums.

It may be popular here inside the beltway to malign these employees but the facts are very simple -- their tasks are very important and are all functions that the customer, the American people, consider essential.

Mr. Chairman, one message from today's hearing should be a thank you to all Federal employees for their perseverance during a period of uncertainty. These men and women, who have children to feed and college tuition payments to make, have been justifiably worried since rumors of shutdowns began in late summer.

We should not allow anyone to add insult to injury by suggesting that these people are not vital to the operations of our Nation. We should stop playing games and we should stop pretending that government shutdowns are not serious matters that should never be allowed to occur.

OMB estimates that the six day shutdown last month cost about \$750 million. We can avoid wasting more money by passing a continuing resolution tonight or early tomorrow. I urge the leadership to do just that and I ask Members of this Subcommittee to join me in that request.

Mr. MICA. I thank the gentleman for his testimony and now recognize Mr. Gekas from Pennsylvania.

I believe you have legislation to amend Title V to provide for the continuance of Federal civilian pay during a period of lapsed appropriations.

Mr. GEKAS. I thank the Chair, and I thank the members of the committee.

I wish to reiterate many of the sentiments that have been expressed by the previous panel and some of those that have been uttered by my friend from Maryland, although I must take issue with him, if muscling was the key, as he saw it, of what occurred this year that caused the shutdown, then those who engaged in that muscling had great teachers in the Democrat majority that existed since I've been in Congress and who used it on those limited shutdowns, however limited they were, to try to muscle President Reagan and President Bush at that time for their own means.

Appearing before the Rules Committee, then headed by Senator Pepper, if you recall, followed by Joe Moakley, the Democrats uniformly resisted my efforts to bring about this instant replay, which I will redescribe here, on the strength of, they said privately and publicly, that that would rob them, the majority, of that very same muscle power to which the gentleman from Maryland refers. And the Republicans on the Rules Committee thought my idea was great, and they were going to support it, and did. And I got 100 percent Republicans and 100 percent negative votes from the Democrats.

Now comes 1995, and I was elated because my proposal was going to receive immediate acceptance. I go before the Rules Committee, and Moakley praises my bill up and down, Hall of Ohio thinks it's wonderful; Beilenson of California was ready to send me a bouquet of roses. And Mr. Solomon, Mr. Goss, and the others voted against me. [Laughter.]

It is no laughing matter, although I've been laughing myself.

So the record should be straight that the muscling is the only thing that is bipartisan so far. Now, let's get to the meat of it.

When I first perceived, as I became a Member of Congress, the potential of shutdowns and actual shutdowns, I introduced, a century ago, the instant replay concept, which would say that if, on September 30 of any given year, the fiscal year having ended without a budget or without any 1 of the 13 appropriations bills having been passed, that on October 1 there would be automatically enacted, by virtue of this legislation, last year's budget, the House-passed version or the Senate version, whichever would be at the lower figure.

That ends all our problems. If we adopt my kind of legislation, the concerns expressed by the gentleman, Mr. Burton, who I hope will be listening to this, because some of what he projected enters into what I'm saying, those problems no longer exist. They are no longer required, those fine distinctions between essential and non-essential employees.

If Mr. Burton's plan, the one that he wants to cosponsor with the gentleman from Virginia, Mr. Moran, goes into effect, where are the appropriations going to come from for the electric lights and the computers and the custodial services that will go along with

the volunteer who goes in, and we know we're going to pay him retroactively? Who pays for the lights and the gas and all the other accoutrements that are required to keep that Federal employee working?

There are hundreds of problems involved in it, but I'm just citing a couple of them to say, forget that; adopt my legislation, and you don't have to worry about it anymore.

Now, let's talk about the muscling. This is important to me to try to make my point. The bargaining power that the majority, like the Democrats of 40 years and the Republicans of 9 months, have tried to use in this exercise was for the purpose of preserving negotiating power at the forthcoming budget negotiations. Democrats did it, now the Republicans are doing it.

I believe that we can convince them, or try to convince them, that they do not lose the negotiating power if they adopt my instant replay type of legislation. Why? Because if the President, for instance, should be dissatisfied with that low figure that comes into play under my bill, last year's figure, when he had grand plans to spend more money, he will want to negotiate to get back his original idea of extra appropriations for a particular bureau or program.

The Republicans, who will want a new type of budget, will want to zero out a program which they can't zero out because they don't have the cooperation of the President. Now here is where their negotiating power remains intact, to try to zero out a program with these kinds of instant replays reprogramming, going automatically into existence at lower levels than ever before.

Further, the Republicans who are interested in a balanced budget, joined by some individuals on the Democratic side, will see that will save money, and go toward the balanced budget, if, during the instant replay of the previous budget, we remain at lower levels than what the new budget would project in any event. So we're on a glide path toward a balanced budget anyway.

I am chagrined that an effort in better government is not seen as an effort in better government because it is wrapped up in the muscling which we want to see forever abolished from the political scene. I urge the members and the committee, as its own function, to support this type of legislation.

[The prepared statement of Hon. George Gekas follows:]

**Testimony of Congressman George W. Gekas  
before the Civil Service Subcommittee  
of the House Government Reform and Oversight Committee  
Thursday, December 14, 1995**

Chairman Mica, Members of the Civil Service Committee, I want to begin by thanking you for holding this hearing. This hearing will help provide further illumination of the cloudy issue of a government shutdown. I want to focus my remarks on the Civiletti opinions, considered to be the historical roots of shutdowns caused by a lapse in appropriations.

In the Spring of 1980, Benjamin Civiletti prepared an Opinion of the Attorney General of The United States upon the request of President Jimmy Carter. In this document, dated April 25, 1980, he concluded that during a lapse in appropriations President Carter must shut down the government. Specifically, he stated:

It is my opinion that during a period of "lapsed appropriations," no funds may be expended except as necessary to bring about the orderly termination of an agency's functions, and that the obligation or expenditure of funds for any purpose not otherwise authorized by law would be a violation of the Antideficiency Act.

Civiletti reviewed the Comptroller General's Opinion -- the premier document on this issue at the time -- which stated that money could be expended to maintain essential day-to-day operations, and that employees would continue to be employed. The Comptroller General concluded individuals could continue to work because it was not "the intent of Congress that GAO close down." Civiletti found this conclusion "legally insupportable." And with these words the modern day government shutdown, or train wreck, began.

On the eve of the inauguration of President Ronald Reagan, January 16, 1981, Civiletti revisited the issue of a lapse in appropriations and concluded by stating:

The foregoing discussion articulates the principles according to which, in my judgement, the Executive can properly identify those functions that the Government may continue upon lapses in appropriations. Should a situation again present itself as extreme as the emergency that arose on October 1, 1980, this analysis should assist in guiding planning by all departments and agencies of the Government.

As the law is now written, the nation must reply initially for the efficient operation of government on the timely and responsible function of the legislative process. The Constitution and the Antideficiency Act itself leaves the Executive leeway to perform essential functions and make the government "workable." Any inconvenience that this system, in extreme circumstances, may bode is outweighed, in my estimation, by the salutary distribution of power that it embodies.

It is clear from this quotation that upon further review of the issue Civiletti found, in the waning hours of the Carter Administration, that the law combined with the Constitution granted the Executive branch authority to perform essential functions and make the government "workable". From this opinion the great debate over essential and non-essential employees and functions began.

However, the debate on essential and non-essential is not truly the issue. It is clear that government shutdowns and how they should be handled falls in the great vat of political questions. As the above quotations from Civiletti imply, the central issue centers on the legislative process. The themes are the intent of Congress and the responsible execution of Congressional power.

That is why as a member of the then minority, I introduced legislation in every Congress since 1989 to clarify Congress' intent and provide for the responsible execution of Congressional power. My legislation, introduced in the 104th Congress as H.R. 2006, provides for an automatic continuing resolution which would forever prevent a lapse in appropriations from occurring.

During the 104th Congress, I also introduced a second piece of legislation on this issue which was referred to this subcommittee. I also sent a letter dated August 4, 1995 to Chairmen Mica and Clinger requesting hearings on shutdowns in general and on my bill, H.R. 2007, in particular. H.R. 2007 is designed to address the cost incurred by the federal government during a shutdown by providing "authorization by law" to take the necessary actions to avoid the wasteful expenditure of taxpayer dollars during a lapse in appropriations.

Following the November 1995 lapse in appropriations shutdown -- the longest in the history of this country -- it is, or soon will be, clear that such shutdowns create significant questions, problems and expense. As Benjamin Civiletti, and the Comptroller General before him, alluded, it would take an act of Congress to change the Antideficiency Act. Though the problem is rooted in the actions of the executive branch and the shutdowns this country has experienced are often fueled by Presidential vetoes, the balance of power at the root of this country's governmental system dictates that the responsible and right thing to do is for Congress to take action to clarify the intent behind the Antideficiency Act and put an end to the perennial threat of a government shutdown which looms over Washington. If Congress fails to act on this most important policy issue the balance of power may tip. The executive branch may trespass upon Congress' control of the purse strings in an effort, during a lapse in appropriations, to make the government "workable".

Mr. MICA. I thank the gentleman and would now like to recognize for 5 minutes Mr. Browder of Alabama.

Welcome.

Mr. BROWDER. Thank you, Mr. Chairman.

I let others talk about why we had the shutdown and how to fix it so we don't have it in the future.

Mr. MICA. Excuse me for a second. I didn't properly recognize you. You have a bill, and your legislation is to provide that the President and Members of Congress shall not be paid during the Federal Government shutdowns; is that correct?

Mr. BROWDER. Yes, sir.

Mr. MICA. Mr. Gekas is leaving on that note. [Laughter.]

I want to make sure that I cite the intent of each of the bills. So you are recognized. Go ahead.

Mr. BROWDER. Mr. Chairman, I have submitted a written statement. My remarks will be brief.

It is very specific problem, and I think I can offer a very specific correction for that problem. I don't have a heck of a lot of Federal employees in my district. I imagine I'm average for a Member of Congress. So whenever this happened, they asked me a very simple question. They said, "I bet you guys are going to get your paycheck Friday." And I came back—I didn't know; I asked—I even had trouble getting it out of my own staff—that we're treated differently.

This is a question of fairness that we can easily address. Just as it is not right for Congress to isolate itself from the impact of its mandates on business, it should not have immunity from the impact of its decision on people's lives. Yet it does. Unlike other government salaries, a permanent appropriation funds congressional salaries, while the President's salary is protected by the Constitution. This situation allows the President and Congress to escape the pain that they inflict.

Unfortunately, bills that deny pay during a shutdown, for constitutional reasons, will have to wait until after the next election to be effective. And I don't want to engage in Congress-bashing or President-bashing. We all believe that people should receive pay for work, but there is a difference between myself and the staff that I asked to work, without knowing whether they would be paid or when they would be paid.

So we have another crisis. Three weeks ago, when I introduced this bill, I said, in 3 weeks we may be facing this same kind of situation. We are facing that situation. That's why I'm here testifying, asking you today to put this minor correction into whatever legislation you draft. This legislation rejects a strict pay cut mechanism and opts for placing Congress and the President in the same situation as Federal employees who stay on the job during a shutdown.

Our goal isn't to coerce an outcome in policy by taking away earned pay. We simply want to remind Congress and the President of the real problems regular people face when their paychecks are tampered with. This will remind us, as we go about trying to find a solution, of the burden that these people are undergoing. It will communicate to the Federal workers who are working during this crisis that we do have sympathy for them. If they are going to have to work for 6 months during a shutdown, they won't draw their paycheck till the 6 months are up. We should do the same thing.

It will send a message to the American taxpayer, who doesn't care about either one of us when this happens, the burden that we're placing on ourselves, but they do need to understand and I think they would appreciate knowing that we, Congress and the President, consider that we and the Federal employees who are working and the taxpayers are all in the same boat.

Mr. Chairman, I appreciate your allowing me to present this rather minor piece of legislation that I think has importance to the people that I represent and a lot of people outside of this area.

I would ask if the chairman would mind if I be excused from the panel to attend a 3:30 appointment. And I've got a feeling that most of the questions that your Members are going to ask are directed to those who know why this shutdown occurred and how we can stop it next time.

I yield back the balance of my time.

[The prepared statement of Hon. Glen Browder follows:]

Testimony of the Honorable Glen Browder  
before the Subcommittee on Civil Service  
of the House Committee on Government Reform and Oversight

December 14, 1995

Mr. Chairman and members of the Subcommittee on Civil Service, thank you for holding this hearing on a subject of great interest to federal civil servants as we face the prospect of another government shutdown. That is whether the people who precipitate the shutdown should be isolated from its effects. I introduced H.R. 2671 on November 20 to address this issue.

In November, for the first time in 10 years we closed the doors of government during a workweek. Our actions left 398,756 federal workers who stayed on the job without a guarantee that they would be paid on time. Approximately 800,000 furloughed workers had no idea whether they would receive paychecks at all. These are people who had mortgages, car payments, children's dental bills, groceries -- the purchase of all the necessities of life -- dependent upon that next paycheck. What of the decision makers who put these people's financial security on the line? Members of Congress and the President enjoyed immunity from the consequences of the shutdown. At a time when we have been dismantling the Congressional system of privileges, we exercised the privilege of a protected, timely paycheck while people suffered and the work of the government ground to a stop.

Just as it is not right that Congress isolated itself from the impact of its mandates on business, it should not have immunity from the impact of its decisions on people's lives. Yet it does. Unlike other government salaries, a permanent appropriation funds Congressional salaries, while the President's salary is protected by the Constitution. This situation allows them to escape the pain they inflict. But their actions have real world consequences. A \$18,000-a-year clerk in my District has to wonder if she will be able to pay the power bill, while Congress collects its \$130,000 salary on time. These are people whose lives that are being disrupted. No matter how important the policy Congress and the President shouldn't forget that.

Unfortunately, bills that deny pay during a shutdown, for Constitutional reasons, will have to wait until after the next election to be effective. The crisis is this year. That is why I wrote H.R. 2671 to apply new budget rules to this year's Congress. It rejects a strict pay cut mechanism and opts for placing Congress and the President in the same situation as federal employees who stay on the job during a shutdown. This is the most responsible and sensible approach. Our goal isn't to coerce an outcome in these policy disputes by taking away earned pay. We simply want to remind Congress and the President of the real problems regular people face when their paychecks are

tampered with.

Ideally, this would be a moot issue. If Congress had done its work on time, I don't think anyone would have dreamed up a bill like H.R. 2671 just as a good idea. The last weekday shutdown occurred in October 1985. That is why this hasn't been an issue deserving committee attention before now. However, things move in trends, and the trend is toward more confrontational government. Congress and the President should not use federal employees for cannon fodder on their policy battlefield. If they do, then the decision makers should have some shared experience with those they are sacrificing.

H.R. 2671 would apply the same rules to the President and Congress that apply to federal workers who stay on the job. These two are the principals in the appropriation process who must reach agreement. H.R. 2671 is a non-coercive way of reminding them of why they need to reach agreement.

Mr. MICA. I thank the gentleman for his testimony. There may be some questions about your proposal, and some of the members of the panel or staff may want to confer with you on some details, because we may take some action on this. I thank you for your testimony.

I now recognize Mr. Barton from Texas. Mr. Barton has a bill which would allow employees of the U.S. Government, who are placed under furlough, to volunteer to continue working.

Mr. Barton, welcome. You are recognized for 5 minutes.

Mr. BARTON. I thank the distinguished chairman and members of the subcommittee. I will submit my written testimony and try to paraphrase it.

Like Mr. Browder, I don't have many Federal employees. I'm not near the Nation's capital. So, in one sense, I don't have a dog in this hunt. But in the sense that I represent 600,000 taxpayers, I think I do have a reasonable reason to be somewhat concerned about it.

Prior to being in the Congress, I was a plant manager and then worked as an assistant to the vice president of a printing company. One of my plants was a nonunion plant, and another was a union plant. So I became familiar with labor union law. And in trade unionism there is such a thing as a lockout, where a union threatens a strike, or maybe actually goes on strike, and in retaliation to that they lock the workers out.

Federal employees, though to my knowledge, can't go on strike. We fired the air traffic controllers because they went on strike illegally. So it would seem to me that if a Federal employee can't strike, then it should be illegal for the government to lock them out. That's the law of the land.

So I got to thinking, when we had this shutdown, it's not the Federal workers' fault. Now, it may be bad public policy that we have an agency that's in existence, but it's not the workers' fault. The worker has been hired to do a job, reports for work, tries to do the job that the Federal agency is asking them to do.

So how do we resolve this when there is a political confrontation or a public policy confrontation that results in part of the Federal Government shutting down? And the solution that I've come up with is that we shouldn't allow there to be a Federal lockout. We need to let those workers who wish to come to work do so voluntarily.

You might ask yourself, were there workers that tried to work voluntarily in the last shutdown? There were literally thousands, but there is one case that I think deserves special scrutiny. A gentleman who works for the National Park Service, named Bill Fink—and if ever a person was misnamed, it's Mr. Fink—he's a superintendent of the Keweenaw National Historic Park in Michigan. His post was deemed to be nonessential, but, as superintendent of the park, he decided he wanted to stay and work.

So he told his supervisor that he was going to stay and work. And they notified the General Counsel's Office in the Interior Department, and the Interior Department notified him that they were preparing to file criminal charges if he, in fact, showed up for work. He did show up for work; he was cited.

You might think that now that the shutdown is over, this case has been dropped. That is not true. On December 13, Mr. Fink was visited by an investigator from the Department of Interior, and the Department is, apparently, filing criminal charges against the superintendent for deciding that, even though he was deemed non-essential, he was going to go into his park and continue to do his work. There are other cases of Federal workers that took work home and tried to sneak into buildings.

To make a long story short, I think there's a way around this. I have filed two bills, one of a temporary nature, one permanent, that would amend the Antideficiency Act so that, in the event of a future government shutdown, those Federal workers that wanted to volunteer to come and do their job would be allowed to do so. They could not be locked out.

The bill is silent on whether they would be paid or not. My assumption would be that, if somebody volunteered to come to work, at the appropriate time they would be paid. The bill doesn't say they have to, and it doesn't say they cannot be, but it would say they could not be locked out.

I've got two bills, the most recent filed this week, which would permanently amend the Antideficiency Act so that these Federal workers that voluntarily want to come and do their job, in the event of another shutdown, could do so. I've got a number of co-sponsors, and I would hope this subcommittee would look at some version of this bill in a family friendly way in the very near future.

I would yield back the balance of my time.

[The prepared statement of Hon. Joe Barton follows:]

**Testimony of  
Congressman Joe Barton of Texas**

**before the**

**Government Reform and Oversight  
Subcommittee on Civil Service**

**December 14, 1995**

Dear Mr. Chairman and Members of the Subcommittee:

Thank you for giving me the opportunity to speak before your subcommittee. I appreciate the opportunity to come before you and I am glad you are taking up these important issues.

Mr. Chairman, I was amazed to learn during the government shutdown in November that federal employees who were placed on furlough were not allowed to come to work, even if they volunteered. I strongly believe this provision of the law needs to be changed - volunteers should be allowed in the door.

On the first day of the shutdown, November 21, 1995, Bill Fink, Superintendent of Keweenaw National Historic Park in Michigan was told to go home. His post had been determined "non-essential." If he wanted to, he could have gone home to his family, gone shopping, gone fishing, or done anything. He did not have to work.

But Mr. Fink had work he wanted to accomplish. He notified his supervisors in the National Park Service that he planned to stay and complete

his work. The very next day, he was notified that the Secretary of the Interior's Office of Legal Counsel was preparing to file criminal charges against him. He was in violation of the Antideficiency Act, which governs shutdowns. That violation could result in prison time. In addition to prosecution, he was threatened at different times with a fine, a reassignment, suspension, and a written reprimand.

As you can imagine, Mr. Chairman, members of his community and area newspapers rallied to the side of this man who just wanted to do his job. While Mr. Fink's status is uncertain, no one has told him for sure if the criminal charges will go away. In fact, just yesterday, December 13, 1995, Mr. Fink was visited by a investigator from the Department of Interior.

By threatening Mr. Fink and prohibiting federal employees from working, we are ignoring the sense of duty, obligation, and service that he and others show, and crushing the American spirit of volunteerism.

This is ridiculous. During shutdowns, government agencies are and should be prevented from expending funds and entering into contractual obligations. But there is no reason to prevent people like Mr. Fink from working if he wants to.

I am told that many other furloughed federal employees who wanted to work actually took their work home. In some clandestine fashion, they apparently had to hide at home from their supervisors, who amazingly did not want them to do their jobs. This is not what government service is about. We want more efficiency from the federal government, not less.

I have introduced legislation to make this important change. H.R.2667, which was introduced on November 19, 1995, and referred to this subcommittee, would have allowed the government to accept volunteer services during the last shutdown. Yesterday, I introduced H.R.2769, which would make the same change but do so permanently. Joining me as original cosponsors were Congressmen Mark Souder, Larry Combest, J.C. Watts, John Ensign, Duncan Hunter, Greg Laughlin, and Steve Stockman. I expect this bill to be referred to this subcommittee, if it has not already.

I would like to work with the members of this subcommittee to pass this legislation before any future shutdown begins. With this new law in place, the sense of duty and the volunteer spirit of many of our Nation's federal employees could result in more parks being opened, more important questions answered, more routine services available, and generally more work completed.

While the members of this subcommittee may disagree on spending priorities for this fiscal year and beyond, I would expect you all agree that office doors should not be slammed shut on volunteering employees who offer to work. Let's make the needed change. Let's pass H.R.2769.

I thank the subcommittee for its time and would be happy to respond to any questions.

Mr. MICA. I thank the gentleman and recognize Ms. McCarthy from Missouri.

I don't think you have a bill, but you did want to address these issues. So, welcome, and you are recognized for 5 minutes.

Ms. MCCARTHY. Thank you, Mr. Chairman. I would like to thank you and the members of your subcommittee for having this hearing.

I am not here to speak on behalf of or in opposition to any piece of legislation today but to put some faces to the numbers as we address this important issue of what to do about a shutdown. I would like to let this subcommittee know that I am a cosponsor and a whip of the balanced budget amendment that did pass the House, and also 1 of the 68 who voted for the coalition budget, which does balance the budget within 7 years.

I represent Region VII, in large part, which is housed in Kansas City, where 16,000 Federal employees from numerous agencies do work and do serve and do call it home. Our failure to enact a set of appropriation bills on time had a wide-ranging effect on their families and on my community. As a result of the November shutdown, 10,000 Federal employees in my district were furloughed, and people who needed help couldn't get it.

It hurt my constituents in many ways and on a personal level, and that's what I wanted to share with you today. I received, of course, as all of you did, numerous letters and calls. My written testimony does highlight some of those, Mr. Chairman. Mary Alice Kelly of Raytown, with two children and pregnant with a third, her husband was furloughed. She was frantic about the delay in paychecks, and she wrote me to say that it makes her very angry. "I feel like everyone is playing the political posturing game and we're toys," she said, "What am I supposed to do to pay our bills?"

Her story is indicative of many others throughout the country, of course, who were prevented from working for almost 1 week. My own Kansas City Star editorialized that Federal workers deserved better, and I quote: "Summarily dismissed as nonessential and sent home to anxiously await word of funding for their livelihoods; they endured predictable cheap shots from comedians, radio talk show hosts, and pandering politicians, while an increasingly hostile public attacked them for being on paid vacation."

But the shutdown hurt my district and all of our districts in another important way, and that was a lack of service to the American people. In our region, we were not able to provide many of these. Our Department of Housing and Urban Development normally process nearly 100 FHA loans daily from the area. No loan applications were authorized during the shutdown.

Passports were not available; Medicare and Social Security applications were not processed. Contractors, small businesses, some mom and pops, many minority were unable to proceed with projects that could not be inspected. EPA inspections went undone, which will have an effect, long-term, on our environment.

GSA suspended clerical and custodial workers, and that had a ripple effect throughout my community of \$41,000 every day that the government was shut down. But the real tragedy, of course, was the people who needed these services, and that is what I would like to prevent in the future.

So I'm here today to urge cooperation in passing the remaining appropriation bills so that government continues without interruption. That is the solution, for us to get the job done.

I come to you, by the way, with experience, 18 years, in the State legislature, in the Missouri House of Representatives, and for most of those 18 years, service on the House Budget Committee, and for 12 of those 18 years, as chair of the Ways and Means Committee. And every year we balanced our budgets.

It wasn't easy. Choices were many times very difficult, but we got the job done. And I think that's what the American public and certainly all the Federal workers are asking of us now.

I thank this committee for this opportunity to provide testimony and would be happy to answer any questions, Mr. Chairman.

[The prepared statement of Hon. Karen McCarthy follows:]

TESTIMONY OF REP. KAREN MCCARTHY  
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE OF THE  
HOUSE COMMITTEE ON GOVERNMENT REFORM & OVERSIGHT  
THE HONORABLE JOHN L. MICA, CHAIRMAN  
THURSDAY, DECEMBER 14, 1995

Mr. Chairman, members of the committee, thank you for the opportunity to testify on behalf on the federal employees in the fifth district in Missouri. I want to commend Chairman Mica for holding these hearings, which focus on a government shutdown contingency plan particularly its effects on federal employees.

This hearings is timely because, as you know, the Continuing Resolution that Congress passed and the President signed is due to expire tomorrow.

I am especially grateful for the opportunity to testify today. The fifth district of Missouri, which I represent, is in the top ten percent of all Congressional districts representing federal employees.

Kansas City is the Region VII home for a wide collection of federal agencies, including The Social Security Administration, the Departments of Agriculture, Commerce, Energy, Interior, Justice, Labor, Transportation, Treasury, and the General Services Administration.

These agencies employ almost 16,000 employees in Kansas City.

In addition, there are also 7,000 civilian retirees, 2,000 military retirees and 432 military personnel in the Fifth District.

This failure to enact a complete set of appropriations bills had wide-ranging effects on American families, industry and services. As a result of the November shutdown 10,000 federal employees in my district were furloughed, and people who needed help couldn't get it.

The shutdown hurt my constituents in many ways and in a very personal level:

Mary Alice Kelly of Raytown, Missouri wrote a very thought-provoking letter to me during the six-day shutdown in November. Her husband works for the Department of Interior and her family was directly affected by the shutdown. Mrs. Kelly has two young children and was pregnant with a third when her husband was furloughed. She wrote to me regarding her frustrations with a delayed paycheck. It makes me very angry. I feel like everyone's playing the political posturing game and we're the toys. What am I supposed to pay our bills with?!"

Mrs. Kelly's story is indicative of thousands of federal employees who were prevented from working, for almost one week.

I would like to read an excerpt from an editorial that appeared in the November 28th, Kansas City Star entitled: Federal Workers Deserve Better:

Government workers were,

" summarily dismissed as non-essential and sent home to anxiously await word of funding of their livelihoods, they endured predictable cheap shots from comedians, radio talk show hosts, and pandering politicians, while an increasingly hostile public attacked them for being on paid vacation."

The shutdown hurt my district in another important way: the lack of service to the American public. The federal government was not able to provide valuable services to the Kansas City area residents. Mortgages were not processed, passports were not available, Medicare and Social Security applications were not processed.

Even our nation's historical parks and monuments were not available to the public, including closing the Truman Library in Independence, Missouri.

These are real, tangible services that federal employees perform, day in and day out -- services the average citizen takes for granted until the services are suspended because of our inability as elected officials to achieve a consensus and pass spending measures.

I'm here to urge cooperation in passing the remaining appropriations bills so that government continues without interruption.

It is time to realize that the lack of consensus between this Congress and the President really hurts those who are only trying to perform their jobs and serve the United States to the best of their ability. And the taxpayers they are entrusted to serve.

Our inability to cooperate is taking its toll on the American people and its time to stop.

Mr. MICA. We thank the gentlelady for her testimony.

Now I would like to recognize the gentleman from California, Mr. Bono, who I believe has a bill.

It hasn't been referred to us yet, but maybe you could describe it. You are recognized for 5 minutes.

Mr. BONO. Thank you, Mr. Chairman.

First of all, I do want to address what I hear often about the shutdown, the so-called "shutdown," of people bickering, politicians acting like little kids, and why don't they grow up, and all of us. And that kind of astounds me, because, you know, there's a—from my standpoint—there's a huge position here. The position is, we must balance the budget, and we can't get it balanced.

So, at a certain point, you say, "Well, balance the budget or I'm not going to budge. I am going to stick to a position." Now, if opposition says, "Well, I'm going to stick to another position," you can't appropriate blame to me, directly. He may have his position; I have my position. My position is, if we don't balance the budget, we're going to hit a wall going 190 miles an hour. So the budget has to be balanced. So much for that.

As far as politicians bickering or being little boys or girls, or playing games, this is no game. This is incredibly serious. I don't enjoy not being home with my wife and my children, but I want to stick to my guns, and if I have to spend Christmas in this building, then I'll spend it in this building. But now that I have arrived at this issue, I'm going to stick to it, and it's not being a little boy or a little anything. It's my position, and that's why I am a Congressman, certainly not because I'm a politician. So that's my response to that.

Second, I just want to say, why punish staff. Let's issue them IOUs and let them work. We did it at a State level. They got their IOUs, government stayed open. So they don't have to get in the fight. Why bring them into the fight? The fight is me and you, and you and us; it's not the staff. So they shouldn't be punished. If they want to work, give them an IOU, and let them go cash it and keep the money and have Christmas and get through this thing. We'll take the brunt.

So H.R. 2759 allows employees to continue working during any shutdown but also provides them an IOU. This is a proposal that has worked well in my home State of California in the past, during some of its budget problems and shutdowns. In California, people were able to go to the bank with that IOU, and it was honored. My bill avoids the problem of forcing us, and so on.

Anyway, some of this was found to be—there were legal problems. We can overcome these legal problems. I think we should, and I think that would solve this whole issue. So my proposal is simply that we issue IOUs, not penalize staff, and we stick to our position, which I intend to, with every fabric in my body.

So I thank you, Mr. Chairman.

[The prepared statement of Hon. Sonny Bono follows:]

Statement of Congressman Sonny Bono

December 14, 1995 - Committee on Government Reform and Oversight

Thank you Mr. Chairman, I am delighted to have the opportunity to testify on this important subject.

My bill makes a very simple proposal. Of course, no one really wants to shut down the government. Both sides now admit that they want a balanced budget. We are trying to get there. However, during the last shut down, something terrible happened.

Bureaucrats got a paid vacation.

This costs the government millions of dollars in lost productivity. These people were not even allowed to volunteer for work. Of course, I do not want innocent people to be the victims of the process. Thus, I am proposing a way of protecting both the taxpayer and the employee.

My bill, HR 2759, allows employees to continue working during any shut down, but also provides them with an "IOU." This is a proposal that has worked well in my home state of California in the past during some of its budget problems and shut downs. In California, people were able to go to a bank and have that IOU honored. My bill also avoids the problem of forcing people to volunteer without the guarantee of being paid. Of course, my suggestion is a solution to the shut down -- what is a temporary problem.

Hopefully, Congress will review my bill on the merits, and pass it quickly. Ending the practice of a "paid vacation" is a necessity. It is fair for both taxpayers and federal employees.

Again, I thank you Mr. Chairman, and I yield the balance of my time.

Mr. MICA. I thank the gentleman, and all of the panelists for their testimony. We certainly have a wide variety of opinions on how some of these matters should be handled, and hopefully it is reflective of the House, and the committee is designed to sort through that.

I would like to first recognize Mrs. Morella for questions.

Mrs. MORELLA. Thank you.

I again want to thank my colleagues on the second panel who are trying to come up with some solutions to this problem of the shutdown of government and also indicating that, too bad we are even looking for solutions, because the solution really lies with us, in terms of the need for leadership.

First of all, with Mr. Gekas, I thought your story was, unfortunately, so true with regard to the continuing resolution, which I am cosponsoring with you, which I think makes eminent sense.

Ms. McCarthy, you know, I found it very interesting when you talked about the problems with the shutdown and the impact, and, of course, I couldn't agree with you more. You said 10,000 people out of 16,000? Good heavens, it seems like such an inordinate percentage of employees. Maybe you want to comment on that.

Ms. MCCARTHY. Well, that was actually part of the tragedy of it, 10,000 of the 16,000 were told they were nonessential.

Mrs. MORELLA. Nonessential.

Ms. MCCARTHY. Imagine how they feel. And as I mentioned, they became the ridicule of, you know, the talk show hosts, and so forth, for even having a Federal job at all, which wasn't the issue, in my mind. These are people who wanted to work and are necessary for the running of this government, and were denied that opportunity.

Mrs. MORELLA. But what Federal agencies do you have there?

Ms. MCCARTHY. Social Security Administration, Departments of Agriculture, Commerce, Energy, Interior, Justice, Labor, Transportation, Treasury, and GSA.

Mrs. MORELLA. That just seemed like such a high number, but I couldn't agree with you more, in terms of the personal situations and putting a face on all of that.

Ms. MCCARTHY. Thank you.

Mr. HOYER. Mrs. Morella.

Mrs. MORELLA. Mr. Hoyer.

Mr. HOYER. If I might just comment on Ms. McCarthy's answer, the reason her percentage was so high, of course, was because, other than ATF, the agencies that are represented there are essentially non-law-enforcement, nonemergency services agencies. And in those agencies you had a much higher percentage.

There are approximately, as you know, 1.95 million Federal employees, 800,000 of whom were laid off, so that's about 50 percent. But in some agencies—the Treasury Department, for instance—there are and Justice, large numbers of law enforcement officials. So that is why the percentage seems to be higher.

Mrs. MORELLA. We also have had another hearing on this, and, of course, we have all felt that it is so wrong to say someone is essential, someone is not essential. I guess the term we are trying to use, if we have to use a term, is "emergency" and "non-emergency," as such, because it is so demoralizing to use that expression.

Mr. Barton, I am familiar with your bill.

Mr. BARTON. You were a cosponsor.

Mrs. MORELLA. I know, I was. I was for that moment. It was like a snapshot of a moment. It sounded so great, because I knew I had people at NIH, for instance, who found a way through the back to get in, because they wanted so badly to continue with the kind of research they were doing. So I recognize that commitment to public service.

I guess my concern is one that I think I heard Mr. Hoyer talking about, too, and that is, if you then are going to let people volunteer, you know, why do you have a shutdown at all. I guess that's the real problem.

Mr. BARTON. There may actually be a public policy dispute that it's not inappropriate to officially shut down some functions of the government, but that's a dispute that the Congress, sometimes between the parties or the Congress and the President, are going to fight out in the public arena. While they are fighting it out, I don't think it's appropriate to tell a Federal employee, who has been openly hired and tasked to do a job, that, while we get our public policy discussion in order, they can't do their routine work.

By allowing those that wish to come in and volunteer, whether it's in the Passport Office or the Agriculture Department, or whatever, we're not making Federal employees pawns. Now, it could be that, in the public policy discussion, we decide that you don't need as many Agriculture employees, but that's a different issue.

So, by allowing people to volunteer, you simply say, if you've been hired to do a job and want to do the job, we should not lock you out from doing that job while we have this dispute.

Mrs. MORELLA. I think your intention is a good one, but I would also be concerned about possible recriminations that would occur to those people who desire not to volunteer.

Mr. BARTON. That's not a Federal issue. If you've got a supervisor who wants to be retaliatory or a union organizer in those departments that allow Federal employees' unions, then that, in and of itself, is a local issue that would be subject to due process and arbitration and all that.

Mrs. MORELLA. Probably years later.

Mr. BARTON. We can't micromanage something like that, and you just have to depend that most people will operate in a good faith fashion, and let the locals work out the particular problems that arise.

Mrs. MORELLA. My other problem is, too, they may say, well, if you can work with volunteers here, 50 percent of the people who volunteered came back, but the other 50 percent who didn't come back, maybe we can cut the budget of that department, or maybe we don't need those others who don't do it.

Mr. BARTON. Well, again, if that literally is true, Congresswoman, then we've got Federal managers that have fallen down on their jobs, and we have oversight committees of the Congress that have fallen down on their jobs. I certainly don't sense, to pick an agency, the Social Security Administration, that you've got 50 percent of those Federal workers that don't have productive work to do. And I can guarantee you, in Texas, if you go to the Immigration and Naturalization Service, they are overworked, quite frankly.

So there may be some Federal agencies that are overstaffed, but, at the retail level where our constituents go in and need something, there are very few of those employees that are underloaded.

Mrs. MORELLA. You would pay them during that period of time?

Mr. BARTON. Well, my bill is silent on that. I mean, one would assume they wouldn't be paid automatically, but Congressman Bono's idea of an IOU, I think Congressman Burton has got, at least in a draft stage, a bill, I would assume that people, at some time, who volunteered to come to work would be paid, perhaps retroactively. I would also assume that those that didn't volunteer perhaps not be paid or might not be paid as expeditiously, or might be paid on a prorated basis. But my bill is silent on that.

Mrs. MORELLA. I think the answer is that we should do all we can to avert a shutdown.

Mr. GEKAS. May I comment on that, if the lady would yield.

Mrs. MORELLA. Yes, I yield.

Mr. GEKAS. We have many different kinds of solutions here. The gentleman from California has come up with what California experienced in the IOU thing. I, myself, as the lady from Maryland knows, the gentleman from Virginia knows, have worked out a system where a major bank would be willing to come into play and give noninterest loans to the employees during the time that the government is shut down, with the government guaranteeing that they will pay them back out of the first paychecks, that type of thing.

But what we're talking about is engaging in knowing there's going to be a shutdown; we're going to plan for shutdowns. And I think we ought to get away from that and concentrate on avoiding a shutdown. These plans are wonderful and they are ingenious, and I commend the gentleman from California, the gentleman from Texas for these ideas. I have 100 others like that, but all of them can be obviated, unnecessary by going into instant replay.

Mrs. MORELLA. I agree. I agree. I think I said that from the very beginning, this is what we've got to do is not have to be concerned that there will be a shutdown.

Mr. GEKAS. I know.

Mrs. MORELLA. I always can tell you're from California, Mr. Bono, when you have some of these ideas, that IOU.

Mr. BONO. I'm glad you didn't say Hollywood.

Mrs. MORELLA. No, I didn't.

Mr. BONO. It appears to me that this is the most effortless. It's an IOU. It's like money. It's no burden on staff. And it seems relatively painless. Again, none of us want to say, you know, we are digging in and we're going to war. But I think the position that I've arrived and why I'm in this building is that we are here finally talking about a balanced budget. I missed Thanksgiving. I might as well miss Christmas, you know. Let's go.

I'm not saying do it, but I just want the other side to know that if they're going to press it, I'm not going anywhere. So I'm not saying I'm insisting that we continue this battle, but we have taken our position, and it's a good one, and I'm willing to stand behind it as long as I have to stand behind it, until the gentleman signs the balanced budget.

Mr. HOYER. Mr. Chairman, I have polled the panelists, we are not with him on Christmas.

Mrs. MORELLA. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady for your response. Unfortunately, I think he's got 72 others that have taken the blood oath, the Christmas blood oath.

With that, I will recognize the ranking member.

Mr. MORAN. You're telling me there are 73 Members of the House that want to work on Christmas Day. Holy smokes.

Mr. HOYER. That's the Christian Coalition group.

Mr. MORAN. Very family friendly.

Mr. BURTON. That will be enough out of you, Hoyer. [Laughter.]

Mr. HOYER. But you liked it, didn't you?

Mr. MORAN. Poor Frank Wolf. Of all times to start a family friendly caucus. OK.

I agree with Mrs. Morella's observation about the California plan. But let me address what Mr. Hoyer has suggested, and it's consistent Mrs. Morella, and Mr. Gekas has made this point very strongly, as well. We ought not be shutting down the government, and, to the extent we do, it is going to cause ramifications that will extend far beyond the point when we put it back together again.

This is not something that we can do in any kind of cavalier way. Every American citizen is in some way dependent upon Federal services, and they will find out how dependent they are upon those checks and upon that assistance and upon those national parks, and everything else, if we do this very often or for very long.

So I couldn't agree more that the ultimate objective should be not to shut down the Federal Government. But given the fact that we live in a very imperfect world, particularly up here, and that there's a very real possibility that government employees could be furloughed again, I think we need to take some measures to see to it that Federal employees are not made pawns again in this political brinkmanship, if you will, that is transpiring. That's why the legislation that we have suggested, I would hope would be accepted, would get passed this weekend.

In terms of Mr. Gekas' legislation, I think that there is a problem, George, with the instant replay, and I can understand that there might have been reasons beyond the political reasons to oppose that. Because, if you play it out, if you go with the lower of the House or Senate, permanently, it seems to me that the House can get its way if it simply appropriates at a level a couple million dollars less than the Senate.

In other words, what you've done is to take the President, the executive branch, out of the picture. And I think you could abuse the process, or gain the process, if you will, if you were able to accomplish that, just by getting to a lower dollar level on an individual program that you chose. So you might address that, because I know it's a very serious piece of legislation you propose.

The second one that you put in, I think you put it in a couple days before I put mine in, it must have been back in July, or something, that's very similar. That is a different piece of legislation, and I think that would be a simpler one to deal with. But perhaps you could address the first concern.

Mr. GEKAS. Yes. The first one, first of all, you know we did have, perhaps more than one time, a continuing resolution that remained in place for a full year. So the concept that I am talking about has actually been a part of the precedent and history of this institution. So it's not something strange to contemplate that.

What would that mean? That would mean a freeze of last year's budget, more or less. And many of us have, for many years, the gentleman from California will be happy to hear, advocated a freeze as part of the march toward a balanced budget. So the CR that I contemplate that goes into effect automatically because we have this train wreck occurring, would, at its very worst, simply freeze last year's budget or the lowest appropriation.

The question that you asked implicitly is, do we rob the White House and the majority in the Congress of bargaining, negotiating necessity? And we do not. For instance, just take this year's plan.

Mr. MORAN. Mr. Gekas, if I could just interrupt for a moment.

I wanted to thank Mr. Hoyer and Ms. McCarthy for coming and testifying. We appreciate your testimony. I share the chairman's sentiments that it was very helpful to us.

Mr. HOYER. I thank the ranking member. And, Mr. Chairman, thank you. This is a serious subject that all of us have grappled with almost from the time we came here, because none of us think that this is a rational process, and how to avoid it or how to cope with it is a serious subject. I thank you for having the hearing.

Mr. MICA. I thank those Members who must leave now, and we will continue with the hearing.

Mr. Gekas.

Mr. GEKAS. Yes. Let me give you an example of how the negotiating power of both parties, the Congress and the White House, is not diminished by my legislation. If the majority on the Republican side this year wants to continue negotiating power, they feel they lose it by my type of legislation. They think a shutdown would give the leverage for this negotiation.

The Republicans want to zero out a couple of programs. In the current arena in which we work, they want to zero out a couple of programs. The President is shocked by that, doesn't want to even hear about zeroing out some of what he might consider his pet programs.

So now, if my bill goes into effect and last year's budget or the other numbers are in place, that does not allow for the zeroing out of a program that the Republicans want to see happen. And the President, who says to them, "I'll never sign a bill that will zero out this program, but, I'll tell you what, if you give me increased appropriations on this education thing which you are reducing and put that up to a level, I'll sign the zeroing out of that other program that you want."

In other words, there are many facets of the budget that are still negotiable, even when the new CR goes into effect at last year's levels. We don't lose this imaginary wonderful negotiating power that the Democrats of the past felt that they were sacrificing by a CR and would be enhanced by a shutdown, which now the Republicans have adopted as their rationale for negotiating.

So I'm willing to sit down and analyze with the gentleman from Virginia how the CR, at any level, allows negotiation, does not cut

out the President at all, and gives him reason to come to a new budget.

Mr. MORAN. Thank you, Mr. Gekas. Would you support the legislation that is so similar to yours, that Mr. Burton, Mr. Mica, and I are proposing, that we tried to bring up on an expeditious basis?

Mr. GEKAS. I have an ego, but I don't have any pride of authorship on this piece of legislation. I have learned, for instance, that there is whirling around in the Senate, even as we speak here, something like my piece of legislation, with whom I've had many discussions, Senator Mikulski, Senator Warner, Senator Stevens, others who are interested in implementing this kind of legislation.

However it works, if it works, I will be applauding just like you will.

Mr. MORAN. Thank you, Mr. Gekas.

Mr. MICA. I thank the gentleman. I yield now to Mr. Burton.

Mr. BURTON. Well, I'll just take a minute. First of all, I really appreciate you guys working so hard and taking the time to stay here, especially when we're out of session and you might be able to get home with your wife and kids, and we've been working these long hours.

I hereby dub Sonny Bono the "Pit Bull of the House." I tell you, you are true grit. I love you.

One thing about your bill, Joe—Representative Barton.

Mr. BARTON. "Joe" is fine.

Mr. BURTON. We did some checking, and when you use the term "volunteer" in conjunction with what we're trying to do, there's a question of constitutionality. Did you check that out?

Mr. BARTON. Congressman, I have not. I did not know that the word "volunteer" had to be defined.

Mr. BURTON. Well, there is a provision which I believe says that you can't be a volunteer and work for the government. You can't be a voluntary employee.

Mr. BARTON. Well, my intent is that employees that were employed as of the date of the official shutdown could continue to do their job if they wished to. That's my intent.

Mr. BURTON. I understand.

Mr. BARTON. But I'm certainly open to redefining the word "volunteer."

Mr. BURTON. Well, we'll work with you on that, and we'll work on that in our bill, as well.

Representative Gekas, that's a very innovative idea. I'm not sure I see anything wrong with that. I don't know if we can get it passed, but it does have a lot of merit.

Regarding Sonny Bono's proposal for the IOU, that might be a very graphic way to let the American people know that we're spending way beyond our means, if we start giving out IOUs to employees. So I'm not so sure that's really all that bad an idea either. It might put more emphasis on the trend to a balanced budget.

I don't think Mr. Browder's approach, saying no pay, would fly. I wish he were here. The reason is, I think the President could wait out the Congress, because there are a lot of Congressmen that simply could not survive if they started holding their paychecks. And if we were in a hard negotiating session, the President could sit down there at the White House and have dinner and lunch, and

survive without pay for a much longer time than I think Members of Congress. He's got his house paid for, and I don't. So I think he could outlast me.

Mr. BARTON. The other difference on that particular issue is that the Congress and the President are at least in session and, by their own definition, working. Now, the country may question the work is productive, but we're not at home.

Mr. BURTON. Yes. I don't have anything else other than that, other than to say that I really appreciate your hard work. I mean, when we start working around here, and you know how long it takes to put together the kind of thinking and the kind of legislation you're talking about, you usually don't get many accolades or applause. So I, for one, who have been in the trenches with a lot of you guys, really appreciate it, even though we may not all agree on the same bill.

Mr. BARTON. Thank you, Congressman.

Mr. MICA. I thank the panelists. We appreciate your insight and your recommendations. We have a wide variety of other proposals, some of which are similar. Mr. Wynn has a proposal; Mr. Bonilla, Mr. Wolf, Mr. Ensign. We will attempt to consider all the recommendations.

Mr. BARTON. Mr. Chairman, could I ask a question?

Mr. MICA. Yes. Did you have anything additional?

Mr. BARTON. I don't have anything additional to add in an informative way, I just have a question, what is the intent of the Chair and the committee to proceed? Is it your intent to try to move some bill this week, next week?

Mr. MICA. Well, I just spoke to the ranking member, and, as you see, there is a wide diversity of opinion. If the panel can reach some type of agreement or consensus on something that should be moved forward, the leadership has indicated a willingness—if we can reach some consensus—to consider a proposal, possibly even on an emergency basis.

But, as you see, there is a wide diversity of opinion, and some members of the panel who have favored certain positions now may be reluctant to support some compromise. So we're going to work in the next few hours and see what can be developed. We appreciate the contributions you have made. We have learned from your various proposals. You know, 218 votes beats the best argument.

Mr. BARTON. Well, as of 2 weeks ago—I haven't rechecked with the Republican leadership—but at the time of the last shutdown, the Speaker and the majority leader were supportive of the concept that I have put into legislative form. I'm not saying that they, verbatim, continue to support it, and they may have changed their position, but at least initially, several weeks ago, they were supportive of the concept that I have presented.

Mr. MICA. Again, we do have some indication from leadership as willing to consider something, possibly on an emergency basis.

I appreciate the ranking member's willingness to work with us, and other Members, in a bipartisan fashion. Again, we appreciate everyone's testimony today and their suggestions. The record will be kept open, without objection, and we will add additional testimony to the official record.

There being no further formal business before the subcommittee, this meeting is adjourned. Thank you.

[Whereupon, at 3:55 p.m., the subcommittee adjourned.]

[Additional information submitted for the hearing record follows:]



**Oryx Energy Company**  
 13155 Noel Road  
 Dallas TX 75240-5067  
 PO Box 2880  
 Dallas TX 75221-2880  
 214 715 3865  
 FAX 214 715 3870  
 512 478 5117

**Adrian G. Acevedo**  
 Director  
 Government and  
 Public Relations

December 20, 1995

The Honorable Ken Calvert  
 Chairman, Energy and Mineral Resources  
 Resources Committee  
 U. S. House of Representatives  
 Washington, D. C. 20515

Dear Mr. Chairman:

In light of the furloughing of personnel in the Department of Interior Minerals Management Service's (MMS) Gulf of Mexico Regional Office, I would respectfully bring to your attention the impact that is likely to occur if the partial shutdown of the federal government is prolonged. Unless the budget impasse is resolved or additional MMS regional office personnel are deemed "essential" by the Administration, serious economic and employment consequences will result to Oryx Energy Company and its service contractors.

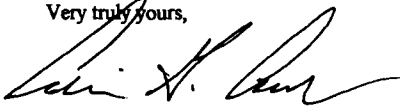
As you know, the inability of the MMS regional office to process drilling and well workover permits in the Gulf of Mexico will force some drilling rigs to shut down. As the office continues to remain closed, the effect becomes more human as employees are laid off. Specifically, let me offer the following:

- Within 2 days, Diamond Offshore's Ocean Endeavor drilling rig, presently working for Oryx Energy, will be idled. Oryx and Diamond Offshore have been unable to obtain a permit for well operations on Viosca Knoll 826 #8. The permit application for deepening the well was submitted on December 8, 1995. The daily rig rate is \$75,000 if the rig is operating and \$35,000 per day if it is idled. Approximately 60 people working on the rig will be out of work unless the situation is remedied.
- Next week, Nabors Drilling Company's Drilling Rig #79, presently under contract with Oryx, will also be idled. Completion permits from the MMS for well operations on High Island Block 384 have not been issued due to the furlough. The initial permit application was made on December 4, with a second application submitted on December 13, 1995. The daily rig rate, if operating, is \$50,000 and \$25,000 per day if it is stacked. Another 60 people working here would be out of work if Rig #79 is idled.

As stated in previous correspondence to both the President and Congressional leadership, over the years Oryx Energy has developed an excellent working relationship with the MMS staff at the regional level. There has not always been complete agreement, but they have been fair in their management/regulatory role. As an independent producer of oil and natural gas for this nation, as an employer and contractor for outside services and personnel, and as a source of federal revenues through royalties on OCS production, we can be viewed as partners with MMS in the development of our energy resources.

Your attention to this matter is greatly appreciated. Any assistance you can offer or provide in seeing that MMS regional personnel are reclassified as "essential" or that the furlough is ended would be most welcomed. Please let me know if you need any additional information or any questions need to be addressed.

Very truly yours,

A handwritten signature in black ink, appearing to read "L. H. L. L.", written in a cursive style.

Office: (713) 260-6300  
Fax: (713) 789-4063

cc: Congressman Tom DeLay  
bcc: Sharla Bickley, Majority Professional Staff



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Fax: (713) 789-4063

**FAX COVER SHEET**

**ATTN: Congressman Tom DeLay**

DATE: January 4, 1996

**COMPANY:** U.S. Congress -  
House of Representatives

REF: MMS "Shutdown"

**FROM:** Thomas J. Seward II  
President

**FAX #:** 202/225-5241

Number of pages sent cover sheet only. If you have difficulty in receiving, please call.

**Dear Congressman DeLay:**

Perhaps you remember that your father and I long worked together when I was on the Storm Drilling board and its investment banker. How frustrated, to put it mildly, Charlie would be with today's shut down of the MMS because of irresponsible and ill-advised politics.

Since MMS drilling permits cannot be issued, offshore rigs are stacking, crews are being laid off and contractor losses are being incurred. Already two of Hercules' five jackups are out of service because of the inability of operators to obtain MMS drilling permits. The longer the MMS is "shut down" the greater the problem will become. We are told that even when it reopens, the backlog of permits to be processed and issued will continue the stacking of rigs and lay off of crews well beyond the date of reopening.

I can't raise hell the way Charlie could, but perhaps you can do something to get Government going.

Very truly yours,

Tom Seward

TJS/bsr



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Office: (713) 260-6300  
Fax: (713) 789-4063

## FAX COVER SHEET

ATTN: Brian T. Petty  
Senior Vice President  
Government Affairs

DATE: January 4, 1996

COMPANY: IADC

REF: MMS "Shutdown"

FROM: Thomas J. Seward II  
President

FAX #: 202/872-0047

Number of pages sent 2. If you have difficulty in receiving, please call.

Dear Brian:

The closure of MMS is having a devastating effect on Hercules and presumably on many other offshore contractors as well. The situation will only escalate in a compounding manner as MMS remains shut down.

Here is the effect on Hercules thus far. Our Rig 11 concluded its contract as scheduled on December 31 with follow-up work to commence with another operator on January 1. Since the latter operator was unable to obtain a permit because of the closure of MMS, Rig 11 remains idle with the dual negative effect of laying off crew members and converting from a daily profit on the rig to a daily loss. The rig, on a letter of intent basis, has follow-up work with another operator scheduled to commence in late January-early February upon the completion of the work that was to begin January 1. We were advised today that notwithstanding the letter of intent it will be necessary for the operator to look for another rig if we are unable to provide Rig 11 by early February.

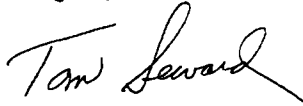
All of this means that carefully orchestrated marketing and operations efforts by Hercules management are in turmoil because of the irresponsible shutdown of a government agency because of a political squabble.

Another jackup, which has worked for the same major operator for over two years, becomes idle today because of the inability of the operator to obtain a federal permit for the drilling that was to commence today. In this instance we have unofficially learned (and have not confirmed) that the operator was willing to pay the \$20,000 daily fine that

results from drilling without a permit. However, MMS later advised the operator that in addition to the \$20,000 daily fine management personnel could be subject to imprisonment. This creates the interesting anomaly of the government on the one hand refusing to issue a permit because it is "shut down" while on the other hand maintaining the availability of Federal marshals to apprehend operators without permits.

Please give me a ring at your convenience to discuss what is IADC's position on the matter. We have learned from industry sources that once MMS reopens the backlog of permit requests now accumulating will result in perhaps significant delays in rigs going back to work, which in turn will cause longer lay offs of crews and greater losses for contractors.

Regards,

A handwritten signature in black ink, appearing to read "Tom Seward". The signature is fluid and cursive, with a long horizontal stroke at the end.

TJS/bsr



Jeffrey A. Fritzlen  
Director of Washington Affairs  
Resources

January 5, 1995

The Honorable Ken Calvert  
House Resources Committee  
Energy and Mineral Resources Subcommittee  
1626 Longworth House Office Building  
Washington, D.C. 20515

Subject: Government Shutdown of Offshore Operations

Dear Mr. Chairman:

On behalf of Union Pacific Resources, I am requesting that the enclosed internal correspondence between Richard Stites of UPR and myself be included in the record regarding impacts of government shutdowns due to budget negotiations and regulatory personnel availability to perform ministerial regulatory functions.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey A. Fritzlen". The signature is fluid and cursive, with the first name being the most prominent.

JAF:dps

Enclosures

cc: Bob Stewart, NOIA  
Richard Stites, UPR



## INTER-OFFICE CORRESPONDENCE

**TO:** Jeffrey A. Fritzien

**OFFICE:** UPC -  
Washington  
D.C.

**FROM:** Richard Stiles

**DATE:** 1/3/96

**SUBJECT** Government Furlough

Pursuant to our telephone conversation we provide some examples of how the governmental furlough impacts UPR.

1. The obtaining of required governmental approvals to operate has been deemed a non-essential service. We are unable to secure Plans of Exploration (POE's), Applications for Permit to Drill (APD's), Development Operations Coordination Documents (DOCD's) among other such required approvals. The result of our inability to obtain such documents and approvals delays the implementation of the planned operations and directly causes increases in the cost of the contemplated operation.

As an example, UPR has contracted for a specific drilling rig to commence operations on a well in Ship Shoal in mid December 1995. If the MMS does not issue a drilling permit, UPR will have to elect to pay standby rig time to hold the rig, or release the rig and delay the commencement of the drilling program, potentially for months. The Ship Shoal prospect is a farm-in from another party. Our contractual obligations under the third party farm-in agreement through which UPR obtained the right to drill this property has a specific performance date. If UPR is stopped from obtaining MMS approvals to drill, UPR cannot meet the contractual drill date and UPR could lose the right to explore the subject property.

2. UPR is the operator of another property in the Brazos area. The property recently started to produce water. The MMS regulations allow UPR 90 days to re-establish hydrocarbon production, or in the alternative to commence new exploratory or development operations to establish production on the block. As we have discussed before, 90 days is a very tight window to coordinate such operations. We are now faced with the problem that the sundry notices required to amend the existing DOCD to provide for new operations on the lease cannot be approved by the MMS during the furlough. We are further advised that notwithstanding the MMS's inability to approve the necessary sundry notices, the 90 day clock is still running. We could lose this lease as a direct result of the furlough.

3. UPR's business plan is based upon UPR's ability to operate efficiently in the last months of the lease term. UPR identifies leases with opportunity that are currently held by other operators. We approach those operators with an offer to do exploratory and/or

developmental work in exchange for an equity interest in the property. The governmental furlough handicaps UPR by eliminating the window of opportunity. The furlough also causes marginal projects to become uneconomic by artificially creating a tremendous backlog for the goods and services needed to perform work timely. The backlog causes demand based inflation in the prices of the good and services needed and it severely alters the timeliness of their delivery. All offshore programs require a great deal of coordination between the support services, supply boats and personnel etc. The furlough causes severe disruption in the demand for these goods services. The supply companies lose money and may go out of business which causes inflation in the cost of the remaining goods and services.

The MMS recognizes that ongoing operations require immediate attention and accordingly have allowed for the necessary approval processes to be available to service such operations. If the operation was commenced prior to the furlough, it can continue without interruption, but new operations cannot be commenced. This allows the MMS to protect their income stream from existing production, but nothing else.

We strongly prefer that the MMS in its entirety be treated as a necessary operation. We also feel that since the government is the Lessor under the leases in the Gulf, that they should not be allowed to profit or derive any benefit with respect to the leases as a result of an operator being precluded from performing work in a timely manner. At a minimum the MMS should extend the term of the leases for a period of time to allow operators to properly, efficiently and cost effectively perform the operations they were precluded from performing during the furlough.



John R. Irwin  
President  
and Chief Executive Officer

**ATWOOD OCEANICS, INC.**

15435 Park Ten Place Drive (77084)  
P.O. Box 218350 (77218)  
Houston, Texas  
Telephone: (713) 492-2929  
Facsimile: (713) 492-0345  
Telex 203204

January 5, 1996

The Honorable Ken Calvert, Chairman  
Energy and Mineral Resources Subcommittee  
House Resources Committee  
1626 LHOB  
Washington, DC 20515

Dear Mr. Chairman:

The purpose of my letter is to convey concern that an extended shutdown of the Minerals Management Service (MMS) could have a serious financial impact directly on our Company and the domestic oil service industry. In that regard, I want to strongly endorse previous requests concerning the urgent need to reclassify additional personnel in the MMS Gulf of Mexico office as "essential". It is my understanding that the current level of employees, despite their best efforts, are unable to perform necessary services including the processing of plans and drilling permits. Our Company has a mobile offshore drilling unit located and employed in the Gulf of Mexico. If our client(s) cannot obtain drilling permits on an ongoing basis due to a shutdown or unreasonable delays, there will be serious financial consequences for us, our client(s) and our industry.

Forward planning by our client(s) has generally resulted, to-date, in little or no shutdown of offshore drilling operations in the Gulf of Mexico. However, if a shutdown and delays continue, the operation of drilling units will begin to be seriously affected and rigs will be shut down and become idle. Each idle unit will suffer substantial revenue losses until the MMS reopens for business and clients receive approval for their well applications. An extended shutdown with a larger number of idle rigs could also potentially result in significant personnel layoffs.

Our Company provides only one of the services necessary for exploring and developing our nation's offshore energy resources. There are numerous other oil-field service companies critical to the process, and they will also lose revenue and, ultimately, may



The Honorable Ken Calvert, Chairman  
 Energy and Mineral Resources Subcommittee  
 House Resources Committee  
 January 5, 1996  
 Page 2

have to lay off personnel until the government can reopen and operate as usual. The magnitude of this problem could easily mean losses of many millions of dollars to the offshore service industry.

We urge your consideration of this matter as you also consider the larger issue of a resolution on a balanced budget. Further, as Chairman of the House Energy and Mineral Resources Subcommittee, you may inquire whether MMS is doing all that it can under the law to avert a shutdown and loss of jobs in the Gulf of Mexico.

Very truly yours,

John R. Irwin  
 President and CEO

JRI/bjr

cc: The Honorable Gene Green, Congressman  
 House of Representatives  
 1024 Longworth House Office Building  
 Washington, DC 20515-4329

The Honorable Ken Bentsen, Congressman  
 House of Representatives  
 128 Cannon House Office Building  
 Washington, DC 20515-4325

FAST FACTS: January 8, 1996

CONTACT: Barney Congdon  
(504) 736-2595

### MMS Recovers from Furlough

During the Federal Government furlough of December 18 - January 5, the Minerals Management Service, a bureau of the Department of the Interior, was not able to grant any approvals to drill new oil and gas wells or for significant changes in wells, facilities, and pipelines. As a result, some 400 approval or modification actions for wells in the Gulf of Mexico were backlogged when the MMS Gulf of Mexico OCS Region staff returned to work on January 8.

The MMS moved expeditiously to issue approvals for critical items as soon as the President signed the continuing budget resolution late on January 5. On Saturday and Sunday, January 6-7, MMS staff came into the office to issue critical approvals on 26 wells. Of the 26 approvals, 9 were issuances of Applications for Permits to Drill for Chevron U.S.A. Inc. (2), Petsec Energy Inc., Shell Offshore Inc., Flextrend Development Company, Murphy Exploration and Production Co., Oryx, Exxon, and Conoco Inc. Seventeen other approvals for completion, workover, or sidetracks of wells or plugging and abandonment were issued to Vastar Resources Inc., Meridian Oil Company (2), Coastal Oil and Gas Corp., Oryx Energy Company (8), King Ranch Oil and Gas, Apache Corporation, Petsec Energy Inc., and Exxon Company U.S.A. (2).

In eight or nine cases, the drilling rigs were idle because of the inability to obtain MMS approval. Costs for an idle rig are a minimum of \$20 - 30,000 per day. Three cases where rigs were idle for at least seven days are Shell Offshore (High Island Block 136 — drilling); Oryx (High Island Block 319 — completion); and Petsec (West Cameron Block 544 — workover).

Of the 400 action items pending, 156 of these were requests for permission to start new wells. At the same time, when MMS returned to work on Monday, January 8, over 30 new applications for well permits were filed.

Because of the inability of MMS to issue approvals for other than emergency flaring (48 hours), several oil and gas companies had to shut in production while waiting on repairs. At one point MMS estimated that 10,000 barrels of oil a day in production were shut in.

In addition, upon its return, the MMS Gulf Office was deluged with a mountain of mail — much of it from industry constituents wanting approvals of action. Some 32 buckets/boxes of mail were opened the first day in addition to about 400 express mail packages.

The Gulf OCS Region of MMS is a key regulatory Agency in the Nation's energy supply. It regulates and approves production amounting to 28% of the Nation's natural gas and 7% of its oil supply. About 80-85% of all OCS production comes from the Gulf of Mexico area.

-MMS-

